TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No 212 80

THE MIDWAY COMPANY, PLAINTIFF IN ERROR,

vs.

FRANK W. EATON, LEONIDAS MERRITT, MERRILL M. CLARK, RICHARD H. FAGAN, AND MARGARETHA LONSTORF.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

FILED JUNE 11, 1900.

(17,797.)

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INDEX.

	Page.
Transcript from district court of St. Louis county	1
Summons	1
Complaint	2
Answer of Merritt, Clark, and Fagan	4
Note as to answer of Eaton (for this answer see side page 307)	33
Reply to answer of Merritt, Clark, and Fagan	34
Reply to answer of Eaton	40
Stipulation to make new party defendants, &c.	47
Order making Margaretha Lonstorf party defendant	50
Findings of fact	51
Conclusions of law	60
Exhibit A—Decision of Secretary of Interior in Hyde & McDonald *vs.* Eaton & Stram, February 18, 1889	63
B—Deed between Orillie Stram and husband and Frank W. Eaton, March 31, 1886	81
Memorandum opinion	86
Stipulation as to further findings, &c.	94

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 1, 1901.

	Page.
Stipulation as to settled case	95
Settled case	96
Testimony and record of proceedings had at the trial	96
Note as to Exhibit A (for Exhibit A see page 63 and side page 330).	106
Exhibit B—Certificate of Commissioner of General Land Office	107
Testimony of Frank W. Eaton	108
Testimony of Edward Byrne	117
Diagram of township 63, range No. 11 west, 4th principal meridian	129
Affidavit of Frank W. Eaton, June 16, 1883	129
Scrip certificate No. 19 D	131
Application of Orillie Stram	131
Register's and receiver's certificate, June 16, 1883	132
Affidavit of Richard Fagan	132
Scrip certificate No. 19 D	133
Application of Orillie Moreau	133
Register's and receiver's certificate, July 21, 1885	134
Diagram of township No. 63, range No. 11 west, 4th principal meridian	137
Affidavit of Richard Fagan	137
Frank W. Eaton	138
Richard Fagan	139
Scrip certificate No. 19 E	140
Application of Orillie Stram	141
Certificate of register and receiver, June 16, 1883	141
Scrip certificate No. 19 E	142
Application of Orillie Stram	142
Certificate of register and receiver, July 21, 1885	143
Affidavit of Edward Byrne, James H. Powers, and Joseph Clement.	145
Deed from Orillie Stram and husband to Frank W. Eaton, March 31, 1886	146
United States patent to Frank Hicks	153
Deed from Frank Hicks *et ux.* to the Midway Company, October 21, 1897	155
Receiver's receipt, July 21, 1885	157
Deed from Orillie Stram and husband to Frank W. Eaton, October 30, 1885	157
Exhibit 1—Certificate of Commissioner of General Land Office to papers in case of Hyde *vs.* Eaton	160
Exhibit A—Letter, Jac Raffauf to White and Reynolds, April 1, 1886	161
B—Declaratory statement of James Henry Power	161
C—Affidavit of Edward Byrne, James H. Powers, and Joseph Clement	162
D—Affidavit of James H. Powers	163
F—Proceedings in matter of application of Orillie Stram to locate scrip No. 19, letter D	166
Proceedings in matter of application of Orillie Stram to locate scrip No. 19, letter E	175
G—Deed from Orillie Stram and husband to Frank W. Eaton, March 31, 1886	183

Page

Exhibit H—Warranty deed and confirmation, Orillie Stram and husband to Frank W. Eaton, May 25, 1883 188
I—Power of attorney to Leonidas Merritt, May 25, 1883 192
J—Certificate of register of deeds 196
Exhibit 2—Certified evidence from the Department of the Interior.. 197
Secretary's certificate 197
Record of hearing 197
Testimony of James H. Power 199
Thomas W. Hyde 219
Angus McDonald 222
George R. Stuntz 226
Jewett McPherson 228
Emil Hartmann 229
S. F. White 231
Frank W. Eaton 232
Edward Byrne 240
Richard H. Fagan 251
James H. Finn 259
Angus McDonald (recalled) 261
Thos. W. Hyde (recalled) 264
Exhibits offered 267
Receipts of register and receiver 268
Deed, Orilie Stram to F. W. Eaton, October 30, 1885 269
Judge's certificate to settled case 272
Notice of motion for new trial 273
Order denying motion for new trial 274
Further opinion 275
Judgment 302
Notice of appeal 305
Answer of Frank W. Eaton 307
Exhibit A—Decision of Secretary of the Interior in Hyde & McDonald vs. Eaton & Stram, February 18, 1889 320
Syllabus 330
Opinion 331
Judgment 341
Order for judgment 342
Minutes of argument 342
Clerk's certificate 343
Petition for writ of error 344
Order allowing writ of error 345
Writ of error 345
Citation and service 346
Bond on writ of error 348
Assignment of errors in Supreme Court of the United States 350
Assignment of errors in supreme court of Minnesota 351
Stipulation in regard to printing record 353

STATE OF MINNESOTA.

Supreme Court

APRIL TERM, 1900.

STATE OF MINNESOTA, COUNTY OF ST. Louis. District Court, Eleventh Judicial District.

THE MIDWAY COMPANY, Plaintiff,

vs.

FRANK W. EATON, LEONIDAS MERRITT, RICHARD H. FAGAN AND MERRILL M. CLARK, Defendants.

SUMMONS.

The State of Minnesota to the above Named Defendants:

You are hereby summoned and required to answer the complaint of the plaintiff in the above

entitled action, of which a copy is hereunto annexed and herewith served upon you, and to serve a copy of your answer to the said complaint on the subscriber at his office in the First National Bank Building, in the City of Duluth, in said County, within twenty days after the service of this summons upon you, exclusive of the day of
4 such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiff in this action will apply to the court for the relief demanded in the complaint.

Dated this first day of April, A. D. 1899.

WALTER AYERS,
Plaintiff's Attorney,
308-9 First National Bank Building,
Duluth, Minnesota.

5 P. H. SEYMOUR,
Of Counsel.

STATE OF MINNESOTA, COUNTY OF ST. Louis. District Court, Eleventh Judicial District.

THE MIDWAY COMPANY, Plaintiff,

vs.

6 FRANK W. EATON, LEONIDAS MERRITT, RICHARD H. FAGAN, AND MERRILL M. CLARK, Defendants.

COMPLAINT.

Plaintiff for its complaint herein alleges:

1. That the plaintiff is a corporation duly organized and doing business under the laws of the State of Minnesota.

2. That the plaintiff is the owner of and is now in the actual possession of the following described lands situate in the State of Minnesota, to-wit: Lots three (3), five (5) and six (6) of Section thirty (30), in Township sixty-three (63) North of Range eleven (11) West of the Fourth Principal Meridian.

3. That all of said lands are situate in the County of St. Louis and State of Minnesota.

4. That each of the defendants severally, wrongfully and unlawfully claim some estate or interest in the said lands and all of them, or lien upon the same, adversely to the plaintiff, all of which claims are unfounded in law or in fact.

5. Wherefore, plaintiff demands judgment adjudging it to be the owner in fee to the lands above described and adjudging that none of the defendants have any interest or estate therein or any lien thereon and perpetually restraining each of the defendants from asserting or enforcing any claim to, any interest, estate or lien in, to or upon said lands or any part thereof, and for the costs and disbursements of this action.

WALTER AYERS,
Attorney for Plaintiff,
308-9 First Nat'l Bank Bldg., Duluth, Minn.

P. H. SEYMOUR, of Counsel.

STATE OF MINNESOTA, COUNTY OF ST. Louis. District Court, Eleventh Judicial District.

THE MIDWAY COMPANY, Plaintiff,

vs.

FRANK W. EATON, LEONIDAS MERRITT, RICHARD H. FAGAN AND MERRILL M. CLARK, Defendants.

Now come the above named defendants, Leonidas Merritt, Merrill M. Clark and Richard H. Fagan, and answering the complaint of the plaintiff herein, deny each and every allegation, matter and thing in said complaint contained, save and except as the same is hereinafter admitted, qualified or explained.

I.

1. These defendants deny that the plaintiff is the owner of the lands described in the complaint, or any part thereof, or has any right, title or interest in the same, and deny that the plaintiff is in the possession of the same or any part thereof.

2. They admit that the lands described in said complaint are in the County of St. Louis and State of Minnesota.

3. The defendants Merrill M. Clark and Richard H. Fagan admit that they claim an interest in the lands described in the said complaint and they allege the fact to be that the said lands are owned by the persons named below and in the proportions herein set forth.

Frank W. Eaton an undivided thirteen thirty-sixths interest, Merrill M. Clark an undivided nine thirty-sixth interest, Margaretha Lonstorf an undivided eight thirty-sixth interest, and Richard H. Fagan an undivided six thirty-sixth interest.

4. These defendants allege that they jointly, with the other owners of undivided interest as hereinbefore set forth, have been in possession of said lands, and all thereof, for about fourteen years last passed, through their agents and tenants, who under their authority and direction, have been in the actual occupation of said lands during said time and were so at the time of the commencement of this action.

II.

5. These defendants further answering said complaint, both by way of defense and for affirmative relief, allege the foundation and basis of their right and title to said premises, described in said complaint, to be as follows, to-wit: That on the 17th day of July, 1854, the Congress of the United States passed an Act entitled, "An Act to Authorize the President of the United States to cause to be surveyed a tract of land in the Territory of Minnesota belonging to the half-breeds and mixed bloods of the Dacotah or Sioux nation of Indians, and for other purposes," by which Act the President of the United States was and became authorized to exchange with the half-breeds and mixed bloods of the Dacotah or Sioux nation of Indians, who were entitled to an interest therein for the tract of land lying on the west side of Lake Pepin and the Mississippi River in the then territory of Minnesota, which had been theretofore set apart and granted for their use

and benefit by the Ninth Article of the treaty of Prairie du Chien on the 15th day of July, 1830, and for that purpose by the said Act, the President of the United States was authorized to cause to be issued to the said persons, on the execution by them or by the legal representatives of
16 such as were minors, of a full and complete relinquishment to the United States of all their right, title and interest according to such form as should be subscribed by the Commissioner of the General Land Office in and to the said tract of land or reservation, certificates or scrip of the amount to which each individual would be entitled of said land or reservation, pro rata among the claimants, which said certificates or scrip, it was by said Act provided, might be located upon
17 any of the said lands within said reservation not then occupied by actual bona fide settlers of the half-breeds or mixed bloods, or such other persons as had gone into said territory by authority of law, or upon any other unoccupied lands of the United States subject to preemption or private sale, or upon any other surveyed lands not reserved by government, upon which they should respectively make improvements. It being further provided in said Act that said certificates or scrip
18 should not embrace more than 640 nor less than 40 acres each and that the same should be equally apportioned, as nearly as practicable among those entitled to an interest in said reservation. That it was further provided in and by the terms of this Act, that the President be and was authorized to cause to be ascertained the number of the half-breeds and mixed bloods who were entitled to participate in said grant or reservation, and to issue the scrip or certificates provided for in said

Act. That the said Act of Congress was approved July 17th, 1854, and became in force on and after said date, and the same is codified and published in the Tenth volume of the United States Statutes at Large on page 304 and is hereby made a part of this complaint as fully and in all respects as though the same were set forth here in haec verbae. 19

6. That pursuant to the provisions of said Act, the President of the United States caused the number and names of the said half-breeds and mixed bloods who were entitled to participate in the benefits of said grant or reservation to be ascertained; and the said persons so entitled to the benefits thereof duly executed a full and complete relinquishment to the United States, of all right, title and interest in the manner prescribed by the 20 Commissioner of the General Land Office, in or to said tract of land or reservation, and the said tract of land or reservation thereby became fully relinquished to the United States government which proceeded to open up the same for disposition and settlement, in accordance with the public land laws of the United States.

7. That in consideration of said relinquishment to the United States by the said persons entitled to the benefits of said reservation, of the 21 said lands or reservation, and of all their right, title and interest therein to the said United States, pursuant to the provisions of the said Act, and in manner and form prescribed by the Land Department of the United States, the President of the United States caused to be issued to the several parties entitled to the benefits of said Act, certificates or scrip for the same amount of land for which each of such individuals were found to be

entitled in case of a division of said grant or reservation, which said certificates or scrip were, under the provisions of said Act, locatable upon any of the lands within said reservation not then occupied by actual settlers of the classes mentioned in this Act, or upon any other unoccupied lands of the United States, subject to preemption or
22 private sale, or upon any other unsurveyed lands not reserved by the government, upon which they should have respectively made improvements.

8. That one of the persons entitled to benefits of said Act, and entitled to the benefits of said reservation, and who joined with others of her nation in surrendering to the United States said reservation, and who executed due and proper relinquishment thereof, was one Orillie Moreau, a
23 half-breed of the said nation, who afterwards intermarried with one Roman Stram.

9. And that under and by virtue of the said Act of Congress, and of the interest and rights which the said Orillie Moreau had in said reservation and lands at the time said Act became in force, the said Orillie Moreau was and became entitled to certificates or scrip, under the provisions of said Act, entitling her to have and take instead of the rights which she surrendered in
24 and to said reservation, at least three hundred and twenty acres of government land of the classes mentioned and specified in said Act, and that on or about the 23rd day of November, 1856, certificates or scrip, such as are provided for in and by the terms of said Act duly issued to said Orillie Moreau, numbered 19E and 19D, entitling the said Orillie Moreau to take, have and reserve of the public lands of the United States, of the classes mentioned in said Act, three hundred and twenty

acres of such lands, each of said certificates being for one hundred and sixty acres.

10. That thereafter and on the 16th day of June, A. D. 1883, the said Orillie Moreau, then Orillie Stram, never having theretofore made use of the said certificates or scrip, and the same never having in any manner been extinguished or satisfied, through the defendant Frank W. Eaton, (who had theretofore been by her duly empowered as her attorney in fact for that purpose) presented the said scrip at the local land office in Duluth, Minnesota, and then and there made application to locate the same on certain unsurveyed lands of the United States, in the said land district in which the said land office was located, and did enter and take said land under and by virtue of said scrip, the lands for which said application was made, as aforesaid, was in said application described by metes and bounds as follows: Starting at the quarter post on the east line of Section 25, Township 63 North of Range 12, West, and thence running east 240 rods for a place of beginning; thence south 80 rods, thence east 80 rods, thence north 80 rods, thence east 80 rods, thence north 160 rods,thence west 80 rods, thence south 80 rods, thence west 80 rods, thence south 80 rods, to the place of beginning, the same being located under scrip number 19E. Also commencing at the quarter post on the east line of Section 25 in Township 63 North of Range 12 West; running thence north on said section line 80 rods, thence east 80 rods, thence north 80 rods, thence east 80 rods, thence south 80 rods, thence east 80 rods, thence south 80 rods, thence west 240 rods to the place of beginning. The same being located under scrip 19D, each of said locations embracing 160

acres of land, the same not being lands reserved by the government of the United States for *any* purpose whatsoever. The said scrip and the said application to locate said lands thereunder, being then and on that day filed in the said local land office at said Duluth, Minnesota, together with a diagram or plat of said lands so located, em-
28 bracing therein such descriptions thereof as were sufficient to duly and properly designate the same; and that prior to the location of said scrip upon said land as above stated, substantial improvements had been made thereon by and under the authority of and for the benefit of the said Orillie Stram; that the said Orillie Stram in all respects complied with the said Act of Congress, and with the methods, rules and regulations pre-
29 scribed by the Land Department of the United States, for the location and entry of such lands under such scrip.

11. That thereafter, on or about the 20th day of July, 1885, said lands having been duly surveyed and platted, the plat and survey of said Township and of the said lands, made by and under the authority of the government of the United States, was duly filed in the local land office at said Duluth, Minnesota, and thereupon and on the
30 21st day of July, 1885, upon application of the said Orillie Stram, acting by and through her duly constituted attorney in fact, said certificate of Sioux half-breed scrip number 19D was adjusted to lots three (3), five (5), and six (6), and the southeast quarter of the northwest quarter of Section 30, Township 63 North of Range 11, West; said certificates of Sioux half-breed scrip number 19E was adjusted upon lots one (1), and two (2) and the southwest quarter of the northeast

quarter and the northwest quarter of the south-
east quarter of Section 30, Township 63 North of
Range 11, West, being the same lands hereinbe-
fore described by metes and bounds, and then and
there and on that day said certificates or scrip
was duly located upon said surveyed
lands as above described, and the
said lands as surveyed lands were 31
duly taken, entered and appropriated under and
by virtue of said certificates or scrip. That both
on the 16th day of June, 1883, as hereinbefore set
forth, when the said scrip or certificates were filed
and located upon the said lands as unsurveyed
lands, and on the 21st day of July, 1885, when
they were adjusted to and located upon said lands
as surveyed lands, the entry and location thereof
and the application to locate said scrip thereon 32
were duly and properly allowed by the local land
officers at said Duluth, Minnesota, there being
on neither of said dates, or at any time previous
thereto, nor at any other time, any valid, adverse
claims to said lands, or any intervening rights of
any other persons whomsoever thereto, and said
lands being at said time, except under and by
virtue of said certificates or scrip, unappropriated
governments lands of the United States and of the
class mentioned and set forth in the said Act of
Congress subject to location under said scrip or 33
certificates, and on the last named date, towit, July
21st, 1885, Receivers' receipts and certificates of
entry and filing and of the allowance of said appli-
cation and the location of said scrip thereon, were
duly and regularly issued and delivered at the
local land office of said Duluth, Minnesota, to the
said Orillie Stram, which were thereupon duly
recorded in the office of the Register of Deeds in

the county in which said lands was located, and have ever since remained of record therein.

12. And these defendants allege the fact to be that thereupon said scrip or certificates became satisfied and the obligations of the United States, in consideration of the surrender by said
34 Orillie Moreau of her interest in said reservation, became discharged, and the said lands taken and located upon said scrip or certificates, hereinbefore described, became from the first of said dates of entry and location segregated from the public domain and became henceforth the property and estate of the said Orillie Stram, and those claiming by, through and under her, without regard whatsoever to the issuance of any patent in form therefor by the government of the United States.

35 13. That through sundry mesne conveyances these defendants, Merrill M. Clark, and Richard H. Fagan have become owners of an undivided one-fourth and an undivided one-sixth interest, respectively, in and to said lands and have succeeded to the ownership of the said undivided interests as aforesaid, of all the right, title and interest which the said Orillie Stram (formerly Orillie Moreau) at any time had in and to said lands and that the land described in the complaint is a
36 part and portion of the said lands.

14. That about the time of the adjustment of the said scrip to the said surveyed lands and of the appropriation of the said lands as surveyed lands, to the satisfaction and extinguishment of said scrip, one Thomas Hyde made an application to make a preemption filing upon lots five (5) and six (6) and the southwest quarter of the northwest quarter of said Section, which application was denied by the local land officers at said Du-

luth, Minnesota, and on or about the same time one Angus McDonald made a like application on lot two (2) and the north half of the southeast quarter and the southwest quarter of the northeast quarter of said section, which application was also denied by the said local land officers at said Duluth, Minnesota, both on the grounds that 37
the said lands had already been appropriated by the location of said scrip hereon, and also that the applications of said Hyde and McDonald were not made in good faith but were made in fraud and in violation of the preemption laws of the United States, and were affected by a fraudulent and unlawful intent, rendering the same invalid, and that it was duly and properly determined by the local land officers and sustained by Departmental decision, that neither the said Hyde nor 38
the said McDonald ever had or obtained any rights whatsoever in or to the said lands by virtue of said preemption filings or by virtue of any subsequent proceedings on the part of said Hyde or McDonald, or either of them, to obtain said lands, and that said preemption filings were void and invalid and contrary to the laws of the United States, and that they, said Hyde and McDonald thereby obtained no preference right of entry, or any rights of any character in and to said lands, or any part thereof; but that notwithstanding 39
the same, the said Hyde and McDonald made an attack upon the Land Department of the United States in or about the month of November, 1885, upon said location of the said scrip or certificates of the said Orillie Stram upon said lands and of the entry of the said lands thereunder, charging that the said Orillie Stram had never made any improvements whatsoever upon said lands, either

in person or by agent or attorney and that the same, at the time of the said first filing thereof, as hereinbefore set forth, were unsurveyed lands, and could be located only after such improvements had been made, and supported the same by an affidavit which had by misrepresentation been
40 obtained from the said Orillie Stram, in which she denied giving said power to said Eaton, or any authority to locate the scrip or erect buildings or make improvements on the lands in controversy or any land for her use and benefit, and that such charges on the part of said Hyde and McDonald culminated in a hearing thereon in the local land office at said Duluth, Minnesota, on the 6th day of April, 1886, resulting in a decision of the said land office sustaining the said scrip locations, in
41 which decision the said local land officers held, among other things:

That the scrip in question was located upon unsurveyed lands on June 16th, 1883, more than one year before the preemptors, Hyde and McDonald settled, and was adjusted to the surveys July 21st, 1885.

That the record contained duly executed powers of attorney from the scripee and her husband to Frank W. Eaton, giving him full power to
42 do all acts necessary to effect and secure permanent bona fide locations of the scrip.

That Eaton, under said authority, employed another to go upon the land and make suitable improvements, giving directions what improvements to make and how to make them, which improvements were made for Eaton and for the purposes claimed by him.

That the said scripee, while stating in said affidavit that she did not know Eaton and never

authorized him to make improvements on the lands, did not appear at the hearing to testify in support of the charges made, and that she never asked that the location be cancelled and that the scrip be returned to her, but on the contrary, between the date of said affidavit and the day of the hearing, executed and delivered a deed of confirmation, acknowledging, ratifying and 43
confirming all that she had done by Eaton as her attorney.

And further decided that there was nothing in the evidence to show that the scripee was misled or imposed upon by the said Eaton or his agents, nor to controvert the fact that the said scrip locations were affected in conformity with the usual and accepted practice in such cases, and in accordance with the law and the rules of the 44
Land Department, and held that the contestants had failed to make out a case and that the scrip location should stand.

From that decision contestants Hyde and McDonald appealed to the General Land Office, assigning six specifications of error, among others, that the local land officers had treated the case as if the controversy was between the scripee and her attorney in fact, whereas it grew out of a contest between third parties, between said Hyde and 45
McDonald, who claimed to have shown that the scrip was fraudulent on the part of the scripee and her grantees and that the local land officers had failed to pass upon the question whether the land contained improvements made by or under the personal supervision or direction of the scripee and for her personal use and benefit, and erred in finding that a confirmatory deed made between

two of the parties could bar the right of subsequent bona fide applications.

Pending said proceedings on appeal, other parties made application to contest the said scrip locations and also to contest the preemption claims of said Hyde and McDonald, which, under
46 the instructions of the Commissioner of the General Land Office in August, 1887, were held subject to the final disposition of said appeal.

That upon said appeal the Commissioner of the General Land Office made his decision and found that accompanying the scrip and applications to locate the same, were two original powers of attorney given May 25th, 1883, by the scripee and her husband to Frank W. Eaton, and that with each application was an affidavit by said
47 Eaton setting out that under said powers of attorney he had caused to be built upon each of the said tracts upon which scrip was located, a house fourteen by sixteen feet, one story high, of timber covered with split shingles with door and windows; that he had also cleared half an acre of each tract and that said improvements were made under the personal direction of said scripee and for her personal use and benefit, and further decided that in the record there was an original
48 power of attorney given by the said scripee and her husband to Leonidas Merritt, granting him full power and authority to enter upon and take possession of any and all pieces and parcels of land in the State of Minnesota which they then owned or might thereatfer acquire or become interested in under and by virtue of the location of the scrip in question and prosecute and defend any suit at law in the courts of said state, and to grant, bargain, sell, dismiss, lease, convey and

confirm said lands, or any part thereof by deed, conveyance, demise or lease, in the same manner as if performed by them individually;

And further decided that in the record were certified copies of warranty deeds, dated July 2nd, 1883, executed by said Leonidas Merritt in the name of the said scripee and her husband, under 49
and by virtue of the power of attorney above mentioned, conveying to Edward Byrns, Joseph A. Powers and Joseph Clement an undivided one-third interest in and to the lands embraced in said scrip locations involved in said controversy, the consideration named in said deed being $25,000 also certified copies of two warranty deeds, dated July 6th, 1883, executed in the same manner by the same party, conveying to Frank W. Eaton an undivided two-thirds interest in and to said 50
tract of land, the consideration named in each being $25,000. Also that Joseph Clement one of the grantees of an undivided one-third interest, above mentioned on August 28th, 1883, as appears by certified copies of two deeds of warranty on file, conveyed to one Nicholas Lonstorf his undivided one-ninth interest in and to said tracts, the consideration named being Two Hundred and Fifty Dollars, and that on the next day, August 29th, 1883, as shown by certified copies on file, 51
Joseph Powers, another of the grantees of an undivided one-third interest, executed two similar deeds, conveying to said Lonstorf his undivided one-ninth interest in and to said tracts, the consideration named being Three Hundred and Fifty Dollars in each deed; and also that the record contained quit claim deeds correcting faulty descriptions in said previous deeds, said decision holding that a two-ninths interest under said scrip loca-

tions had by said deeds vested in Nicholas Lonstorf, one-ninth in Edward Byrns and six-ninths in Frank W. Eaton.

The said commissioner further decided that several deeds of conveyance conferred no greater title upon the grantees than the grantors had,
52 which he held was simply a right to these tracts of land, subject to the final adjudication and approval of the locations; said commissioner also in said decision found that prior to the hearing before the local land office, to-wit, on March 31st, 1886, the scripee, Orillie Stram, and her husband joined in a deed of confirmation, ratifying and confirming all and singular the acts of the said Frank W. Eaton and Leonidas Merritt relative to the acts in question done and performed by them,
53 under the respective powers of attorney given as hereinbefore described;

The said commissioner further determined in said decision that the record before him established by a clear preponderance of evidence, the fact that said Eaton, by virtue of his power of attorney, employed Edward Byrns to make the improvements upon the respective tracts in question, and that Byrns procured the services of Powers and Clement to assist him therein; that Eaton
54 admits that the power of attorney under which he acted, was executed by the said scripee in blank and that he had never seen the scripee until March 31st, 1886, that he had not himself seen the land and did not know whether the scripee had seen it or not; that the deed of confirmation of the scripee appears, so far as she and Eaton are concerned, to remove any objections to the acts previously performed by the latter under and by virtue of said power of attorney, and that the

affidavits accompanying the locations of said scrip appear to fulfill the requirements of the circular of May 28th, 1878, as printed in the 5th Copp's Land Owner, 126;

The said commissioner further decided in said decision that the only other question left to pass upon, touching the legality of said scrip locations 55
was whether the power of attorney given by the said scripee to Frank W. Eaton, by virtue of which she made the locations, could carry with it under the law, power and authority to make the improvements necessary as a perquisite to valid location of the scrip on unsurveyed lands, and held that since the evidence showed that the scripee never saw the lands or the improvements, nor had anything to do with the same personally, and since the circular above referred to re- 56
quired that the Indian should have direct connection with the land and claim the same for his or her own personal use, that the scrip locations were not valid and should be cancelled as speculative and made with evident intent to evade the law, rather than comply with the legal requirements.

That an appeal was taken from the General Land Office to the Secretary of the Interior on or about the 4th day of August, 1888, by said 57
Orillie Stram and Frank W. Eaton, her attorney in fact and the said parties in interest, it being assigned as specifications of error on said appeal, among other things, that the said Commissioner of the General Land Office erred in holding and deciding that there was any failure in manner, form or substance on the part of the scripee in locating said scrip numbered 19E and 19D on the tracts of land selected by her, or in making the

improvements required to be placed on unsurveyed lands by the act of Congress approved July 17th, 1854, and in holding that improvements on unsurveyed lands subject to appropriation under said Act, must be made by or under the personal supervision and direction of the scripee, and be for his or her personal use and benefit, and that
58 it must appear that the Indian has direct connection with the tract located and is claiming the same for his own personal use, and in holding the law to be that the performance of conditions necessary to the valid location and satisfaction of the scrip certificates issued in conformity with said Act, may not be lawfully delegated to and done by an agent empowered by and acting for the scripee, and in holding that the adjustment of the lines of the public surveys of a scrip loca-
59 tion theretofore made by an agent of the scripee on unsurveyed lands, though assented to and ratified by the scripee, does not constitute a valid appropriation of the tract, and in not finding and holding that at the time of the adjustment of the scrip to the lines of the public survey, no valid right under the laws of the United States had attached to said land adversely to said scrip, and in not holding that at the date of said adjustment, no right adverse thereto had attached to said
60 land, and said adjustment was in legal contemplation and intent a location on surveyed land, and thence in not requiring improvements as a condition precedent to valid location, and in holding said scrip location for cancellation, and for failure to find and decide the questions in issue, both in law and fact, in favor of the title of the scripee;

That thereafter and on the 18th day of February, 1889, the Hon. William F. Vilas, then Secretary of the Interior of the United States determined said cause on appeal and held that the said scrip locations were valid, which decision was afterwards on the 28th day of January, 1891, confirmed by the Hon. John W. Noble then Secretary of the Interior, it being also determined in 61
the decisions of both Secretaries that neither Hyde nor McDonald nor any person or persons whomsoever, had any right, title or interest in or to said land, or any part thereof or any claim thereon, and that at no time, either intervening between said location of said scrip upon unsurveyed land and the time of the adjustment of said scrip to the same as surveyed land, or at any other time, had any valid rights attached to said lands adverse to said 62
scrip locations, and assumed to determine and decide that the said lands were still public lands of the United States open to entry;

That the said Secretary of the Interior, Mr. Vilas in and by the decision above mentioned, held that the said scrip, being accompanied by two powers of attorney executed in blank, one giving to some one not then named power to locate the scrip and the other giving like authority to sell the lands which might be located thereunder, op- 63
erated as an assignment of the scrip and assumed that the same, after many years passing through different hands, lodged in the hands of Frank W. Eaton, who filled up the blanks in the power of attorney and employed others to make slight improvements on the land, and located the scrip as attorney in fact of said Orillie Stram, the scripee, and that the other power of attorney was filled out in the name of Leonidas Merritt as the attor-

ney in fact who executed the conveyances; that the scripee never saw the land and had not seen Eaton at the time he acted for her, as her attorney in fact and did not know that there was such a person, and assumed the fact that she had sold the scrip long prior to the location and had no
64 personal interest in the land and that the improvements were not made for her personal use and benefit and that her actual interest in the land ceased when she disposed of the scrip, which the said secretary assumed that she did by virtue of said powers;

That said Secretary in said decision found that said Orillie Stram, her husband joining, had ratified what had been done by her said attorney in fact and found, or assumed, that said ratification
65 was for a consideration, and held that such confirmation did not change the fact that the improvements and location although made under the said power of attorney, were not under the direction and in the interest of the said scripee but in the interest of the acquisition of said land and in the interest of those who desired to acquire it through said scrip;

That in the decision of Secretary Noble, above referred to, a case confirming the decision of Sec-
66 retary Noble, the case was not gone into detail, Secretary Noble affirming the position taken by Secretary Vilas and also affirming the position of the last named Secretary that no other parties had acquired any valid, adverse rights whatsoever in and to said premises.

15. That said decisions of the said Secretaries of the Interior rested upon a mistaken and erroneous interpretation and construction of the laws of the United States under which said scrip

locations were made; among others, in this, that the power of attorney under which said Eaton acted as the attorney in fact of said Orillie Stram in making said scrip locations and in filing said scrip and in entering said lands, was in blank in so far as the name of the donee in said power was concerned, when first executed by the said scripee, Orillie Stram, and hence void; that the improvements made upon said lands in connection with the first filing of the first scrip thereon, were not made by the said scripee Orillie Stram in person, or for her personal benefit or enjoyment and that she had no personal connection with said land and hence that the location of said scrip on said land was unlawful and invalid. That prior to the location of said scrip upon said land, that said Orillie Stram had executed a power of attorney, to-wit, to the defendant Leonidas Merritt, to sell and convey the land which might be obtained under the said scrip, and hence that by means of the two powers of attorney, the one to locate and the other to sell, an assignment of the said scrip had been effected contrary to the provisions of the said statute, and hence that all proceedings had under the said power of attorney of the said Eaton to locate the said scrip were invalid; notwithstanding that thereatfer the said Orillie Stram had in all respects confirmed the said acts of the said Eaton as her attorney in fact. That the said Eaton, prior to the location of the said scrip, had not seen the said scripee, Orillie Stram, and did not know whether she had been upon the land personally or not, and hence that the entry and location of the land in her name and under said scrip was invalid. That said decision rested upon an erroneous and unsupported assumption of the fact

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that said certificates in the name of Orillie Stram were disposed of by her under the two powers of attorney, the one to locate and the other to sell, and executed by her in blank, which after many years, passing through different hands, lodged in the hands of said Frank W. Eaton, who filled up
70 the power to locate the same with his own name and empowered other persons to make slight improvements on the land, and thereupon located the scrip as the attorney for said Orillie Stram, and afterwards filled, or caused to be filled, the blank in the power of attorney, with the name of the said defendant Leonidas Merritt, and that she, the said Orillie Stram, did not know at the time of he said acts, of said Eaton and that there was such a person as said Eaton in existence. Whereas,
71 in truth and in fact there was nothing in the records of said case, as the same was made before the said secretaries, to justify such conclusions and assumptions of fact; and whereas the same was and is contrary to the actual facts then and there and since existing and appearing in said record, and, whereas said conclusions of law and the interpretations of the law as aforesaid were erroneous, mistaken and wrongful and contrary to the interpretation of said law, as made in numerous decisions of the Land Department and
72 courts of the United States; the true facts being as established in said record without contradiction, that the said Orillie Stram did not make a sale of said scrip or certificates and never made an assignment thereof, and that shortly and a few days before the filing of said scrip upon said lands, and desirous of obtaining lands that she might have the benefit thereof and sell and dispost of the same, after she obtained the same, and

receive the benefit thereof, she executed and delivered said power of attorney under which said Eaton acted in making said locations, and under which he acted in making and causing to be made the improvements upon said lands, which improvements these defendants allege were good and substantial improvements and in all respects satisfied the terms, the letter and spirit of the law, as found by the local land officers, and that they were made for the purpose and to the end that the said lands should be acquired by and in the name of the said Orillie Stram, to be disposed of if she so desired by her or under her authority, after the same should be so obtained. That the said interpretation of the law by the said Secretaries of the Interior, that the said improvements had to be made in person or under the personal direction of or for the personal benefit and enjoyment of the said scripee, Orillie Stram, was erroneous, such law only requiring that as to unsurveyed lands improvements be made, to the end that the same should be a notice to other parties that claims had been made to such lands under such scrip or certificate, to prevent others from innocently entering upon said lands and making settlement thereon in ignorance of the claims of said parties under said locations, and to put all such persons on inquiry, and that in truth and in fact it was and is immaterial whether such improvements were placed upon said lands in person by the said scripee, and that, so long as improvements were made, whether the same were made by said scripee in person, or under her immediate direction, or purchased from others who had relinquished their interest therein, the same in all respects satisfied the demands of said law.

16. Further these defendants allege that it was entirely immaterial whether the name of the donee in the said power of attorney was filled in at the time of the first execution thereof or not, inasmuch as the said power of attorney, as was shown without dispute, was delivered to the said Eaton
76 by the said Orillie Stram, through her agents, for the purpose of making said locations in the name of the said Orillie Stram, from which locations and the sale of the lands thereafter she expected to derive a consideration, and inasmuch as said locations were in fact made in her name, and inasmuch as the said scrip or certificates in the name of the said Orillie Stram, were, by the said Eaton, acting as attorney in fact, duly entered, filed and located said lands. Further, that at the
77 time of location of the said scrip upon said lands on July 21st, 1885, at the time when the same were adjusted to said lands as surveyed lands, the plat of survey of the said Township had been made and filed, and there being at that time no valid adverse claims to said lands or any part thereof, no improvements whatsoever were required in order to render valid the location of said scrip upon said lands. And it should have been by the said secretaries held, as in fact the law is, that such entry and such location of said land was
78 in all respects valid, without regard to any improvements whatsoever, no other interest of any parties whomsoever and no adverse claims by which the said lands in the time intervening between the first filing of the said scrip on said lands as unsurveyed lands and the filing and adjustment thereof upon and to the same on said last named date as surveyed lands.

That it was error, to hold and so construe the law that in case the said Orillie Stram desired to sell and dispose of said lands after they should be obtained in order to derive the benefits from sale to which she was entitled under the said certificates or scrip for which she had thereto paid the United States by the surrender of her rights as aforesaid in and to said reservation, that it was invalid for her to execute a power of attorney, whether in blank or otherwise, to sell the said lands after the same should be thus located, even before the said scrip was filed upon said lands, and it was erroneous interpretation and construction of said act and the law applicable thereto on the part of the Secretaries of the Interior, and contrary to the previous rulings and practice of the Land Department, to hold that by said tranactions a sale and assignment of the scrip was effected, or to hold that the acts of the said attorney in fact, said Frank W. Eaton, in the location of said scrip, by reason of said acts on the part of said Orillie Stram, were invalid, inasmuch as the said scrip by the said attorney in fact was located upon said lands and the said lands were taken in the name of said Orillie Stram and subject to her disposal; 79 80

That the said decisions and interpretations of the law by the said Secretaries of the Interior in holding that the said improvements were made in the interest of the said scripee was erroneous in that the same being made in the interest of the entry of the said lands for and in the name of the said scripee and the locations of said scrip thereon were in law made for the benefit and in the interest of the said scripee and in support of said entry, and the law does not require such scripee 81

to make the same in person nor the same be made for her personal use, nor that she should have direct connection with the land;

That the decision of the said Secretaries of the Interior in holding that after the said scrip had been located upon said lands in the name of said
82 scripee, Orillie Stram, the deed of confirmation thereof given by the said Orillie Stram, her husband, joining, which was given to said Frank W. Eaton, on or about March 31st, 1886, was ineffectual, were erroneous and based upon a mistaken construction of the law, inasmuch as said lands having been entered in the name of said Orillie Stram, whether the said power of attorney to sell and convey the same was invalid or not, became immaterial, for the said scripee herself,
83 as found by said decisions, confirmed the acts of the said attorney in fact to sell and convey said lands, and conveyed the same herself to those who were claiming thereunder; and erroneous further in this that it was entirely competent and lawful for the said scripee to act by and through another as her attorney in the selection and location of said lands, and that if said power of attorney to sell and dispose of the lands was invalid, the said lands still remained the property of the said
84 scripee until she executed and delivered said confirmatory deed and up to the time of said decision no valid, adverse claims attached to said lands.

17. That under and by the erroneus decisions of the said secretaries it was attempted to throw said lands open for preemption or for the location of other scrip, as public lands of the United States, and that by virtue of said erroneous decisions of the Land Department assumed to allow,

subsequent to the rendition of said decisions, other parties to come in and apply for the said lands, notwithstanding the fact that during all of this time these defendants and their associates in the ownership of undivided interest in the said land, were in possession of said lands when such proceedings were had pursuant to said erroneous decisions of said Land Department, to which neither these defendants, nor any persons by, through and under whom they claim, were parties. 85

After the decisions of the said secretaries denying the validity of the said scrip locations, but the exact time of which is to defendants unknown, the Land Department of the United States, as defendants are informed and believe, pretended to allow one Frank Hicks to enter the lands described in the complaint, and thereafter, as defendants are informed and believe, issued the patent to the said Hicks for the said lands; but defendants allege that they were not parties to any of the proceedings whereby the said Hicks was permitted to enter and obtain said lands, and further allege that no right, title or interest in and to said lands passed to the said Hicks by the said pretended acts of the Land Department; and these defendants further allege upon information and belief, that the plaintiff obtained its pretended title to the lands mentioned in the complaint from the said Hicks, and that the plaintiff has no other right, title or interest, except that obtained through the said Frank Hicks. 86 87

18. Defendants further allege, that after the filing and location of the said scrip and the adjustment thereof to the said lands, neither the Land Department of the United States, nor any

of its officers, had any jurisdiction whatsoever to deal with said lands or to dispose of the same, or to throw them open to public entry by other persons, or do any act in connection therewith, except it be to cause a patent therefor to issue for said lands to the said Orillie Stram, and allege the fact to be that by the terms of said grant
88 and the said act of Congress as hereinbefore set forth, and the practice of the department then in vogue, the title to said lands had actually passed to the said Orillie Stram as effectually as though a patent in form had been issued therefor to the said Orillie Stram. And that in truth and in fact, the said Orillie Stram, and those claiming under her, thereupon became the owners of the title to said lands, both legally and equitably,
89 and allege that the patent issued to the said Frank Hicks and the entry upon which said patent was issued were erroneously allowed, and the same were allowed and issued without warrant or authority of law; and that if it should be held that the said Hicks and those claiming under him took any title whatsoever to said premises under said patent, that at most it could be but the bare legal title thereto held in trust for the benefit of the owners of the equitable title to said lands, and that these defendants and their co-defendants as
90 the owners of the equitable title to said premises are entitled to a conveyance of the legal title to said lands in question.

III.

19. Further answering said complaint and by way of counter-claim, these defendants allege that the defendant Merrill M. Clark is the owner

of an undivided one-fourth interest and that the said Richard H. Fagan is the owner of an undivided one-sixth interest in and to the lands described in said complaint, and in connection with the owners of the other undivided interests in said lands, that these defendants and the owners of the other undivided interests in said premises, to-wit: Frank W. Eaton and Nicholas Lonstorf 91
have been in possession of said lands by and through their agents for the passed fourteen years, and have claimed to own said lands during all of said time, under and by virtue of the said conveyances of the said premises from the said Orillie Stram to these defendants, the deeds of which conveyances have been on record in the office of the Register of Deeds in the county where said premises are located for more than thirteen years 92
last passed.

And defendants further allege that the said plaintiff and all other persons hereinbefore mentioned under whom it claims, have at all times had knowledge of the rights, interest and ownership of the defendants herein, and of the rights of those under whom these defendants claim, and that the said plaintiff, and those through whom it claims to have derived its title in and to said premises, have had knowledge of the possession of the premises in question by these defendants, by and 93
through their agents,

Wherefor, these defendants pray the court.

I. That the plaintiff take nothing by this action.

II. That it be adjudged, determined and decreed that the plaintiff has no right, title, interest or estate in or to said lands, or any part thereof, or lien thereon.

III. That it be adjudged, determined and decreed that the defendant Merrill M. Clark is the owner of an undivided one-fourth interest and the defendant Richard H. Fagan is the owner of an undivided one-sixth interest in and to the said lands in fee simple, and that it be adjudged, determined and decreed that they are the owners
94 of both the legal and equitable title to the respective interests in the said lands.

IV. That it be adjudged, determined and decreed that the title which the said Frank Hicks obtained by the issuants of the patents to him for said premises, as hereinbefore set forth, was the bare legal title, and that the said legal title has been held in trust by the said Frank Hicks and the plaintiff herein claiming under him, for these de-
95 fendants, and that the said plaintiff be adjudged, ordered and decreed to convey all its rights, title and interest in and to the lands described in said complaint, to these defendants, in the proportions hereinbefore set forth, and that said decree may be so framed that in default of such conveyance by the plaintiff, the decree itself, shall operate as a conveyance of said premises.

V. And for such other and further relief as to the court may seem just and proper in the
96 premises.

Dated Duluth, Minn., April 21st, 1899.

WASHBURN, LEWIS & BAILEY,
Attorneys for Defts. Merritt, Clark and Fagan,
500-505 Lonsdale Bldg., Duluth, Minn.

STATE OF MINNESOTA, COUNTY OF ST. LOUIS.—ss.

Leonidas Merritt and Merrill M. Clark and Richard H. Fagan, being duly sworn depose and say that they are defendants in the above entitled action; that they have read the foregoing answer, and that the same is true of their own knowledge, except as to those matters stated on information and belief, and as to those, they believe them to be true. 97

LEONIDAS MERRITT,
MERRILL M. CLARK,
RICHARD H. FAGAN.

Subscribed and sworn to before me this 21st day of April, 1899.

WILLIAM D. BAILEY,
Notary Public, St. Louis Co., Minn. 98

(Seal.)

STATE OF MINNESOTA, COUNTY OF ST. Louis. District Court, Eleventh Judicial District.

THE MIDWAY COMPANY, Plaintiff, 99

vs.

FRANK W. EATON, LEONIDAS MERRITT, RICHARD H. FAGAN AND MERRILL M. CLARK, Defendants.

Answer of Frank W. Eaton by Towne and Harris and Frank Cutting, his attorneys.

(This answer is not set forth at length, because it is in substantially the same form as the preceding answer of Merritt, Clark and Fagan, and alleges the ownership by Eaton of thirteen thirty-sixths (13-36) of the premises in question.)

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STATE OF MINNESOTA, COUNTY OF ST. Louis. District Court, Eleventh Judicial District.

THE MIDWAY COMPANY, Plaintiff,

vs.

101

FRANK W. EATON, LEONIDAS MERRITT, RICHARD H. FAGAN AND MERRILL M. CLARK, Defendants.

REPLY.

The plaintiff for its reply to the separate answer of the defendants, Leonidas Merritt, Merrill M. Clark and Richard H. Fagan,

102

Admits that on the 17th day of July, A. D. 1854, the Congress of the United States passed the Act entitled, "An Act to authorize the President of the United States, to cause to be surveyed a tract of land in the Territory of Minnesota, belonging to the half-breeds and mixed bloods of the Dakota or Sioux nation of Indians, and for other purposes," referred to in the said answer.

Admits that the United States survey of the lands described in the complaint herein was filed in the local land office at Duluth, Minnesota, on or about the 20th day of July, A. D. 1885.

Admits that shortly after the filing of said survey, one Thomas Hyde made an application to make a preemption filing upon lots five (5) and 103
six (6), and the southeast quarter of the northwest quarter (S. E. 1-4 of N. W. 1-4) of said section and that said application was denied by the local land officers at Duluth aforesaid, and that on or about the same time one Angus McDonald made a like application on lot two (2), and the north half of the southeast quarter (N. 1-2 of S. E. 1-4), and the southwest quarter of the northeast quarter (S. W. 1-4 of N. E. 1-4) of said section, and that said application was also denied by the said local 104
land officers, on the ground that the said lands had already been appropriated by the location of said scrip thereon, and also on the ground that the applications of said Hyde and McDonald were not made in good faith, but were made in fraud and in violation of the preemption laws of the United States, and were affected by fraudulent and unlawful intent, rendering the same invalid, and that it was duly and properly determined by the local land officers, and sustained by depart- 105
mental decision that neither the said Hyde nor the said McDonald ever had or obtained any right whatsoever in or to the said lands by virtue of said preemption filings, or by virtue of any subsequent proceedings on the part of the said Hyde or McDonald, or either of them, to obtain said lands, and that said preemption filings were void and invalid, and contrary to the laws of the United States, and that said Hyde and McDonald there-

by obtained no preference right of entry, or any rights of any character in or to the said lands, or any part thereof.

The plaintiff further admits, that notwithstanding the said decision the said Hyde and McDonald made in the Land Department of the
106 United States in or about the month of November, 1885, an attack upon the pretended location of scrip or certificates which had been made in the name of Orillie Stram, upon the lands described in the complaint, charging that the said Orilie Stram had never made any improvements on said lands, either in person or by agents or attorney, and that the said lands were at the time of said attempted location unsurveyed lands and could be located only after such improvements had been made,
107 and supported the same by an affidavit, in which the said Orillie Stram denied giving said power to said Eaton, or any authority to locate the scrip, or erect buildings or make improvements on the said lands, or on any land for her use or benefit, and denies that the said affidavit had been obtained from said Orillie Stram by misrepresentation, and admits that such charges on the part of the said Hyde and McDonald, culminated in a hearing thereon in the local land office at Duluth,
108 Minnesota, on the 6th day of April, A. D. 1886, which resulted in a decision for the local land officers sustaining the said scrip locations, but as to whether, in the said decision, the said local land officers made the particular holdings, or any of them, alleged in the said answer to have been made by them, the plaintiff denies that it has any knowledge or information sufficient to form a belief.

The plaintiff further admits that from said decision, the contestants, Hyde and McDonald appealed to the General Land Office, but whether upon the particular grounds, or any of them, in said answer alleged, the plaintiff denies that it has any knowledge, or information sufficient to form a belief.

109

Admits that pending said proceedings on appeal other parties made application to contest the said scrip locations, and also to contest the preemption claims of said Hyde and McDonald, which under the instructions of the Commissioner of the General Land Office in August, 1887, were held subject to the final disposition of said appeal.

Admits that upon said appeal the Commissioner of the General Land Office made his decision and found that the said attempted scrip locations were not valid, and should be cancelled as speculative, and made with intent to evade the law, rather than comply with the legal requirements, but as to whether by the said decision they were made the further particular findings, or any of them, alleged in the said answer, the plaintiff denies that it has any knowledge or information sufficient to form a belief.

110

Further answering the plaintiff admits that an appeal from the said decision was taken from the General Land Office to the Secretary of the Interior, on or about the fourth day of August, 1888, by said Orillie Stram and Frank W. Eaton, but as to whether in or upon said appeal there were assigned the particular specifications of error, or any of them, in the said answer alleged, the plaintiff denies that it has any knowledge or information sufficient to form a belief.

111

The plaintiff further admits that thereafter, and on or about the 18th day of February, 1889, the Honorable William F. Vilas, then Secretary of the Interior of the United States, decided said cause on appeal, and held that the said scrip locations were invalid, and that said decision was
112 afterwards, on the 28th day of January, 1891, confirmed by the Honorable John W. Noble, then Secretary of the Interior, and that it was also determined in the decisions of both secretaries, that neither Hyde nor McDonald, nor any person or persons whomsoever had any right, title or interest in or to said land, or any part thereof, or any claim thereon, and that at no time, either intervening between said location of said scrip upon unsurveyed land, and the time of the adjust-
113 ment of said scrip to the same as surveyed land, or at any other time, had they valid rights attached to said lands, and that the said lands were thus left open to disposal under the public land laws of the United States applicable thereto.

Further replying the plaintiff alleges, that the said decisions of said secretaries, were duly rendered upon testimony taken on behalf of all parties then claiming interests in said land, or who had made or attempted to make any of the said
114 locations, entries, filings, or contests, duly taken upon issues duly framed and made by and between them in the said Land Department (all of said parties having been duly cited to appear in said hearings and proceedings, and having duly appeared and participated therein) upon the question among others, whether any improvements had ever been made, upon any of the lands described in the complaint herein, or upon which the said pretended scrip location had

been attempted to be made, by or on behalf of the said Orillie Stram, in whose name the said pretended scrip location had been attempted, and it was found and determined as matter of fact, in and by the decisions of both of the said Secretaries of the Interior, that no such improvements had ever been made, by the said Orillie Stram, or for her use or benefit, or by any one acting on her behalf, and that the said Orillie Stram, never had any interest in the said land, or in the attempted location thereof with the said scrip, and had parted with all her interest in the said scrip long prior to the time when it was claimed that the improvements upon the said land had been made,under the direction of Frank W. Eaton, in the said answer mentioned, all of which findings are in fact true, and all of which findings of fact the plaintiff alleges are conclusive against and an estoppel upon the defendants, Leonidas Merritt, Richard H. Fagan and Merrill M. Clark, and the other parties to the said hearings, and persons claiming under them. 115 116

The plaintiff further admits that after the said decisions the Land Department of the United States allowed one Frank Hicks to enter the lands described in the complaint and thereafter issued a patent to the said Frank Hicks for the said lands, and that the plaintiff herein obtained its title to the lands mentioned in the complaint from the said Frank Hicks. 117

Further replying, the plaintiff denies each and every allegation and part thereof in the said separate answer contained, not hereinbefore specifically admitted or denied.

WALTER AYERS,
Attorney for Plaintiff.

STATE OF MINNESOTA, COUNTY OF ST. LOUIS.—ss.

Walter Ayers, being duly sworn, upon his oath sayeth, that he is the attorney for the plaintiff in the above entitled action and that the foregoing answer is true to the best of his knowledge
118 and belief;

That no officer of the plaintiff, the Midway Company, is present in St. Louis County, Wherefore this affidavit is made by deponent.

WALTER AYERS.

Sworn to and subscribed this 24th day of April, A. D. 1899, before me,

C. O. BALDWIN,
Senator 31st District, Minn.

119

STATE OF MINNESOTA, COUNTY OF ST. Louis. District Court, Eleventh Judicial District.

THE MIDWAY COMPANY, Plaintiff,

vs.

120 FRANK W. EATON, LEONIDAS MERRITT, RICHARD H. FAGAN AND MERRILL M. CLARK, Defendants.

The plaintiff for its reply to the separate answer of the defendant, Frank W. Eaton.

Admits that on the 17th day of July, A. D. 1854, the Congress of the United States passed the Act entitled, "An Act to authorize the Presi-

dent of the United States, to cause to be surveyed a tract of land in the Territory of Minnesota, belonging to the half-breeds and mixed bloods of the Dakota or Sioux nation of Indians, and for other purposes," referred to in the said answer.

Admits that the United States survey of the lands described in the complaint herein was filed in the local land office at Duluth, Minnesota, on or about the 20th day of July, A. D. 1885. 121

Admits that shortly after the filing of said survey, one Thomas Hyde made an application to make a preemption filing upon lots five (5) and six (6), and the southeast quarter of the northwest quarter (S. E. 1-4 of N. W. 1-4) of said section, and that said application was denied by the local land officers at Duluth aforesaid, and that on or about the same time one Angus McDonald made a like application on lot two (2), and the north half of the southeast quarter (N. 1-2 of S. E. 1-4), and the southwest quarter of the northeast quarter (S. W. 1-4 of N. E. 1-4) of said section, and that said application was also denied by the said local land officers, on the ground that the said lands had already been appropriated by the location of said scrip thereon, and also on the ground that the applications of said Hyde and McDonald were not made in good faith, but were made in fraud and in violation of the preemption laws of the United States, and were affected by fraudulent and unlawful intent, rendering the same invalid, and that it was duly and properly determined by the local land officers, and sustained by departmental decision that neither the said Hyde nor the said McDonald ever had or obtained any right whatsoever in or to the said lands by virtue of 122 123

said preemption filings, or by virtue of any subsequent proceedings on the part of the said Hyde or McDonald, or either of them, to obtain said lands, and that said preemption filings were void and invalid, and contrary to the laws of the United States, and that said Hyde and McDonald thereby obtained no preference right of entry, or any
124 rights of any character in or to the said lands, or any part thereof.

The plaintiff further admits, that notwithstanding the said decision the said Hyde and McDonald made in the Land Department of the United States in or about the month of November, 1885, an attack upon the pretended location of scrip or certificates which had been made in the name of Orillie Stram, upon the lands described in
125 the complaint, charging that the said Orilie Stram had never made any improvements on said lands, either in person or by agents or attorneys, and that the said lands were at the time of said attempted location unsurveyed lands and could be located only after such improvements had been made, and supported the same by an affidavit, in which the said Orillie Stram denied giving said power of said Eaton, or any authority to locate the scrip, or erect buildings or make improvements on the
126 said lands, or on any land for her use or benefit, and denies that the said affidavit had been obtained from said Orillie Stram by misrepresentation, and admits that such charges on the part of the said Hyde and McDonald, culminated in a hearing thereon in the local land office at Duluth, Minnesota, on the 6th day of April, A. D. 1886, which resulted in a decision for the local land officers sustaining the said scrip locations, but as to whether, in the said decision, the said local

land officers made the particular holdings, or any of them, alleged in the said answer to have been made by them, the plaintiff denies that it has any knowledge or information sufficient to form a belief.

The plaintiff further admits that from said decision, the contestants, Hyde and McDonald ap- 127
pealed to the General Land Office, but whether upon the particular grounds, or any of them, in said answer alleged, the plaintiff denies that it has any knowledge, or information sufficient to form a belief.

Admits that pending said proceedings on appeal other parties made application to contest the said scrip locations, and also to contest the preemption claims of said Hyde and McDonald, which under the instructions of the Commissioner of the 128
General Land Office in August, 1887, were held subject to the final disposition of said appeal.

Admits that upon said appeal the Commissioner of the General Land Office made his decision and found that the said attempted scrip locations were not valid, and should be cancelled as speculative, and made with intent to evade the law, rather than comply with the legal requirements, but as to whether by the said decision they were made the further particular findings, or any 129
of them, alleged in the said answer, the plaintiff denies that it has any knowledge or information sufficient to form a belief.

Further answering the plaintiff admits that an appeal from the said decision was taken from the General Land Office to the Secretary of the Interior, on or about the fourth day of August, 1888, by said Orillie Stram and Frank W. Eaton,

but as to whether in or upon said appeal there *were assigned the particular* specifications of error, or any of them, in the said answer alleged, the plaintiff denies that it has any knowledge or information sufficient to form a belief.

The plaintiff further admits that thereafter,
130 and on or about the 18th day of February, 1889, the Honorable William F. Vilas, then Secretary of the Interior of the United States, decided said cause on appeal, and held that the said scrip locations were invalid, and that said decision was afterwards, on the 28th day of January, 1891, confirmed by the Honorable John W. Noble, then Secretary of the Interior, and that it was also determined in the decisions of both secretaries, that neither Hyde nor McDonald, nor any person or per-
131 sons whomsoever had any right, title or interest in or to said land, or any part thereof, or any claim thereon, and that at no time, either intervening between said location of said scrip upon unsurveyed land, and the time of the adjustment of said scrip to the same as surveyed land, or at any other time, had they valid rights attached to said lands, and that the said lands were thus left open to disposal under the public land laws of the United States applicable thereto.

132 Further replying the plaintiff alleges, that the said decisions of said secretaries, were duly rendered upon testimony taken on behalf of all parties then claiming interests in said land, or who had made or attempted to make any of the said locations, entries, filings, or contests, duly taken upon issues duly framed and made by and between them in the said Land Department (all of said parties having been duly cited to appear in said hearings and proceedings, and having duly

appeared and participated therein) upon the question among others, whether any improvements had ever been made, upon any of the lands described in the complaint herein, or upon which the said pretended scrip locations had been attempted to be made, by or on behalf of the said Orillie Stram, in whose name the said pretended scrip locations had been attempted, and it was found and determined as matter of fact, in and by the decisions of both of the said Secretaries of the Interior, that no such improvements had ever been made, by the said Orillie Stram, or for her use or benefit, or by any one acting on her behalf, and that the said Orillie Stram, never had any interest in said land, or in the attempted location thereof with said scrip, and had parted with all her interest in the said scrip long prior to the time when it was claimed that the improvements upon said land had been made, under the direction of Frank W. Eaton, in the said answer mentioned, all of which findings are in fact true, and all of which findings of fact the plaintiff alleges are conclusive against and an estoppel upon the defendants, Leonidas Merritt, Richard H. Fagan and Merrill M. Clark, and the other parties to the said hearings, and persons claiming under them.

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The plaintiff further admits that after the said decisions the Land Department of the United States allowed one Frank Hicks to enter the lands described in the complaint and thereafter issued a patent to the said Frank Hicks for the said lands, and that the plaintiff herein obtained its title to the lands mentioned in the complaint from the said Frank Hicks.

Further replying, the plaintiff denies each and every allegation and part thereof in the said separate answer contained, not hereinbefore specifically admitted or denied.

WALTER AYERS,
Attorney for Plaintiff.

136

STATE OF MINNESOTA, COUNTY OF ST. LOUIS.—ss.

Walter Ayers, being duly sworn, upon his oath sayeth, that he is the attorney for the plaintiff in the above entitled action and that the foregoing answer is true to the best of his knowledge and belief;

137 That no officer of the plaintiff, the Midway Company, is at present in St. Louis County, Wherefore this affidavit is made by deponent.

WALTER AYERS.

Sworn to and subscribed this 24th day of April, A. D. 1899, before me,

C. O. BALDWIN,
Senator 31st District, Minn.

138

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss. District Court, Eleventh Judicial District.

THE MIDWAY COMPANY, Plaintiff,

vs. 139

FRANK W. EATON, LEONIDAS MERRITT, RICHARD H. FAGAN AND MERRILL M. CLARK, Defendants.

STIPULATION.

In the above entitled cause it is hereby stipulated and agreed by and between the Midway 140
Company, the above named plaintiff, through its attorney, Walter Ayers, and Margaretha Lonstorf, by her attorneys, Messrs. Phelps and McClintock, that said Margaretha Lonstorf be and she is hereby made a party defendant in said above entitled action, and that said parties be held and bound by the determination of said action as fully and effectually as if said Margaretha Lonstorf had originally been made a party thereto.

It is further stipulated and agreed by the 141
said parties, through their respective attorneys above named, that said Margaretha Lonstorf be, and she is hereby permitted to answer to plaintiff's complaint in said cause, and that the answer of Leonidas Merritt, Merrill H. Clark and Richard H. Fagan, heretofore filed and served in said cause by their attorneys, Messrs Washburn, Lewis and Bailey, be and stand as the answer of said Margaretha Lonstorf therein.

It is further stipulated and agreed by and between said parties, and their respective attorneys, that in addition to the allegations contained in the answer of said Merritt, Clark and Fagan in all things standing as the answer of the said Margaretha Lonstorf, that said Margaretha Lonstorf be, and she is hereby permitted to insert in
142 lieu of paragraph 13 of said answer, the following: (thereby setting forth the claim of title of said Lonstorf), to-wit:

13. "That through sundry mesne conveyances this defendant, Margaretha Lonstorf, has become the owner of an undivided two-ninths interest in and to said lands, and said Eaton, Clark and Fagan of the remainder thereof, and have succeeded to the ownership of said undivided in-
143 terest as aforesaid, of all the right, title and interest which said Orillie Stram, (formerly Orillie Moreau) at any time had in and to said lands, and that the said lands described in the said complaint is a part and portion of said lands."

It is further stipulated and agreed that said Margaretha Lonstorf be, and she is hereby permitted to further answer as follows:

"That long before the commencement of this action, and in the month of July, 1889, the said
144 Nicholas Lonstorf duly made, executed and published his last will and testament, giving and devising unto this defendant his undivided interest in the land and premises described in plaintiff's complaint.

That thereafter and long before the commencement of this action the said Nicholas Lonstorf died testate, leaving this defendant his sole heir and thereupon the said interest of said Nich-

olas Lonstorf in said land and premises passed and descended to this defendant, who thereupon became and ever since has been and is now the owner of an undivided two-ninths interest in said land and premises.

That after the death of said Nicholas Lonstorf and long before the commencement of this 145
action, said will of said Lonstorf was duly admitted to probate in said St. Louis County and was duly recorded in the offices of the Judge of Probate and Register of Deeds in and for said county."

It is further stipulated that the reply of the plaintiff herein to the separate answer of Leonidas Merritt, Richard H. Fagan and Merrill M. Clark, shall stand and be taken as the reply of the plaintiff herein to the answer of the defendant 146
Margaretha Lonstorf, except as to the additional matter which it is herein stipulated may be inserted into the answer of said Margaretha Lonstorf and as to such additional matter, the same is to be deemed denied by the plaintiff;

It is further sitpulated, that said action shall proceed to trial as to said Margaretha Lonstorf in the same manner as if she had been made a party thereto in the first instance, and had been duly served with a notice of trial herein for the May, 147
1899 General Term of said court, said cause now being set for trial.

Dated at Duluth, Minn., this 20th day of May, 1899.

WALTER AYERS,
Attorney for Plaintiff.

PHELPS & McCLINTOCK,
Attorneys for Margaretha Lonstorf.

STATE OF MINNESOTA, COUNTY OF ST. Louis. District Court, Eleventh Judicial District.

THE MIDWAY COMPANY, Plaintiff,

vs.

148 FRANK W. EATON, et al., Defendants.

It having been stipulated by and between the plaintiff herein and Margaretha Lonstorf that the said Margaretha Lonstorf should be made a party defendant in the above entitled action in the same manner and with the same effect as if she had been named in the summons and complaint
149 herein as a party defendant, and that the said Margaretha Lonstorf should be bound by the determination of said action and the said Margaretha Lonstorf having appeared and answered in said cause,

Now on motion of Walter Ayers, one of the attorneys of the plaintiff herein, it is ordered that the said Margaretha Lonstorf be, and she hereby is, made a party defendant in said action in the same manner and with the same effect as if she
150 had been named in the summons and complaint herein as a party defendant.

Dated May 25th, A. D. 1899.

By the Court,

S. H. MOER, Judge.

We consent to the making and entry of the above order.

PHELPS & McCLINTOCK,
Attorneys for Margaretha Lonstorf.

STATE OF MINNESOTA, COUNTY OF ST. Louis. District Court, Eleventh Judicial District.

THE MIDWAY COMPANY, Plaintiff,

vs.

FRANK W. EATON, LEONIDAS MERRITT, RICHARD H. FAGAN AND MERRILL M. CLARK, AND MARGARETHA LONSTORF, Defendants.

This cause being on the calendar of the General May 1899 Term of this Court came on for trial in due course before the undersigned judge of said court without a jury at the court house in the City of Duluth in the County of St. Louis and State of Minnesota, on the 12th day of June, 1899, Walter Ayers and P. H. Seymour appearing as attorneys for the plaintiff, Washburn, Lewis and Bailey appearing as attorneys for the defendants, Leonidas Merritt, Richard H. Fagan and Merrill M. Clark, and Towne and Harris and Frank Cutting appearing as attorneys for the defendant Frank W. Eaton, W. B. Phelps appearing as attorney for the defendant Margaretha Lonstorf and the court having heard and considered the evidence adduced upon said trial and the arguments of the respective attorneys therein hereby makes and files its findings of fact and conclusions of law in said cause:

FINDINGS OF FACT.

1. That one Orillie Moreau afterwards married to one Stram and thereafter known as Orillie

Stram was one of the parties entitled to the benefits of the Act of Congress of the United States of July 17th, 1854, entitled "An Act to authorize the President of the United States to cause to be surveyed a tract of land in the Territory of Minnesota, belonging to the half-breeds and mixed bloods
154 of the Dacotah or Sioux nation of Indians and for other purposes" and of the treaty negotiated with said half-breeds and mixed bloods in pursuance of said Act by the President of the United States, and in the pursuance thereof there was issued to said Orillie Moreau certificates commonly known as Sioux half-breed scrip numbered 19E. and 19D., entitling said Orillie Moreau, afterwards Stram, to select, take and have of the public lands of the United States of the classes mentioned in said
155 Act, 320 acres of such land each of certificates or scrip being for 160 acres.

2. That thereafter and on the 16th day of June, A. D. 1883, the said Orillie Moreau then Orillie Stram, never having theretofore made use of the said certificates of scrip and the same never having been in any manner extinguished or satisfied, through the defendant Frank W. Eaton, who had theretofore been by her duly empowered as her attorney in fact for that purpose, presented
156 said scrip at the local land office in Duluth, Minnesota, and then and there made application to locate the same on certain then unsurveyed lands of the United States in said district in which said land office was located and did then and there enter and file upon by virtue of said scrip the lands for which said application was made as aforesaid and filing therewith a diagram or plat of said land embracing a sufficient description thereof to properly designate the same, which

lands were in said application described by metes and bounds as follows: Starting at the quarter post on the east line of section 25, township 63, north of range 12, west; thence running east 240 rods for a place of beginning, thence south 80 rods, thence east 80 rods, thence north 80 rods, thence east 80 rods, thence north 160 rods, thence west 80 rods, thence south 80 rods, thence west 80 rods, thence south 80 rods to the place of beginning, the same being located under said scrip number 19E; also commencing at the quarter post on the east line of section 25, in township 63, north of range 12, west; running thence north on said section line 80 rods, thence east 80 rods, thence north 80 rods, thence east 80 rods, thence south 80 rods, thence east 80 rods, thence south 80 rods, thence west 240 rods to the place of beginning, the same being located under scrip number 19D, each of said locations embracing 160 acres of land, the same not being lands reserved by the Government of the United States for any purpose whatsoever. That prior to the location of said scrip upon said land as above found improvements had been made thereon consisting of a house 14 by 16 feet, by and under the authority of the said Frank W. Eaton. 157 158

3. That thereafter and on the 20th day of July, 1885, said lands having been duly surveyed and platted, the plat and survey of said township and of said lands made by and under the authority of the Government of the United States was duly filed in the local land office at the City of Duluth, Minnesota, and thereupon and on the 21st day of July, 1885, upon application of the said Orillie Stram acting by and through her said attorney in fact said certificate of Sioux half- 159

breed scrip number 19D was adjusted to and upon lots 3, 5 and 6 and the southeast quarter of the northwest quarter of section 30 in township 63, north of range 11, west, and said certificate of Sioux half breed scrip number 19E was adjusted upon lots 1 and 2 and the southwest quarter of the
160 northeast quarter and the northwest quarter of the southeast quarter of section 30, township 63, north of range 11, west, being the same lands hereinbefore described by metes and bounds and then and there and on that day said certificates of scrip were duly located upon the said surveyed lands and the said lands as surveyed lands were taken and appropriated under and by virtue of said scrip and the locations of said scrip were at said time allowed by the officers of the local land office at
161 Duluth, Minnesota, there not being at said time nor at the time when the scrip was located on said unsurveyed lands nor at any other time any valid adverse claims to said lands and on the 21st day of July, 1885, receiver's final receipts and certificates of entry and filing were duly and regularly issued to said Orillie Stram which were duly and regularly recorded in the office of the Register of Deeds for the County of Lake and State of Minnesota and also in the office of the Register of
162 Deeds for the County of St. Louis and State of Minnesota within a few days thereafter.

4. That through sundry mesne conveyances duly of record the defendants Merrill M. Clark, Richard H. Fagan, Frank W. Eaton and Margaretha Lonstorf have succeeded to the rights and interests of the said Orillie Stram in and to the said lands in the following proporfions respectively: Frank W. Eaton, the undivided 13-36, Merrill M. Clark, the undivided 9-36, Margaretha Lonstorf

the undivided 8-36 and Richard H. Fagan the undivided 6-36 and the said defendants are still the owners of the said lands in said proportions.

5 That on the 20th day of July, 1885, one Thomas Hyde made an application to make a preemption filing upon lots 5 and 6 and the southeast quarter of the northwest quarter of said section heretofore referred to which application was denied by the local land officers at Duluth, Minnesota, and upon the same day one Angus McDonald made a like application for lot 2 and the north half of the southeast quarter and the southwest quarter of the northeast quarter of said section heretofore referred to, which application was also denied by the local land officers both on the ground that said lands had already been appropriated by the location of the said scrip thereon and also that the applications of the said Hyde and the said McDonald were not made in good faith but were made in fraud and in violation of the preemption laws and were effected by a fraudulent and unlawful intent rendering the same invalid and that it was duly determined by the local land officers and sustained by the decision of the Commissioner of the General Land Office and also by the Secretary of the Interior that neither the said Hyde nor the said McDonald ever had or obtained any rights whatsoever in or to the said lands by virtue of said application for preemption filings or by virtue of any subsequent proceedings on their part or either of them but that notwithstanding the same the said Hyde and the said McDonald made an attack upon the said decisions of the Land Department some time in November, 1885, and upon the location of the said certificates of scrip and of the entry of the said

lands thereunder; that a hearing before the local land officers at Duluth, Minnesota, was ordered and had on the 6th day of April, 1886, resulting in a decision of the said local land officers sustaining the said scrip locations from which said decision and appeal was taken to the Commissioner
166 of the General Land Office by the said Hyde and McDonald and a hearing was had thereon before said Commissioner upon which said Commissioner held adversely to the said scrip locations, whereupon an appeal being taken to the Secretary of the Interior of the United States and a hearing had thereon the said Secretary of the Interior on the 18th day of February, 1889, by his decision a copy of which is hereto annexed marked "Exhibit A" and made a part hereof, held and determined that
167 neither said Hyde nor said McDonald had any right or interest in or valid claims to said lands or any thereof whatsoever, notwithstanding the same in said decision the said Secretary of the Interior held and decided that said Orillie Stram and those claiming under her were not entitled to said land under and by virtue of said scrip locations and held that said scrip locations upon said land were illegal and invalid for the following reasons, to-wit: First, that the said improve-
168 ments made upon said lands while it was yet unsurveyed in aid of the location of said scrip upon said lands were not made under the personal supervision and direction of the said Orillie Stram and that she had not had personal contact with the land; second, that by reason of the fact that the said Orillie Stram had executed and delivered to the said Frank W. Eaton a power of attorney to locate the said scrip and at the same time executed and delivered a power of attorney to Leon-

idas Merritt to sell the lands that should be located under and by virtue of said pieces of scrip after the same were located, that the said transactions operated in law as an assignment of the scrip and were in violation of that portion of the Act of July 17th, 1854, prohibiting assignments of the scrip issued thereunder and hence that said entry of the said lands was not for the benefit of said Orillie Stram; third, that the location of said lands and the adjustment of said scrip thereto after the said lands were surveyed and the plat of said township filed, notwithstanding no intervening rights had accrued to any other parties, could not be effectual in view of the previous attempt to locate said scrip upon said lands while the same were unsurveyed and in view of the decision of said secretary relative to the question of improvements; fourth, the secretary held in said decision that the scripee had no power or right to alienate the land she was entitled to receive under and by virtue of said scrip before the location of the scrip or to make and contract for the sale of the same after the same should be located, or grant any power to another to sell the same for her after the same should be located, but held that the scripee had the right to sell the land immediately after the location of the scrip and the said Secretary of the Interior therefore and thereupon held that said lands should be thrown open for public entry and held the same to still be a part of the public domain and subject to entry.

169

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6. That prior to the said hearing had before the local land officers at the City of Duluth, the said Orillie Stram and Roman Stram, her husband, executed and delivered to the said Frank W. Eaton, a certain instrument in writing, bear-

ing date the 31st day of March, 1886, which was thereafter, to-wit, on the 3rd day of April, 1886, duly recorded in the office of the Register of Deeds of said St. Louis county, and on the 24th day of April, duly recorded in the office of the Register of Deeds of Lake county, Minnesota, a true copy
172 of which said instrument is annexed to these findings, marked "Exhibit B" and made a part hereof.

7. That the said Midway Company and the said Germania Iron Company are each of them duly incorporated.

8. That thereafter and in pursuance of the said decision of the said Secretary of the Interior hereinbefore referred to the said lands were attempted to be thrown open for public entry and the United States of America, acting through its
173 officers, on the 10th day of May, 1898, issued and delivered to one Frank Hicks its patent in the usual form purporting to convey to the said Frank Hicks the premises described in the complaint herein, lots number 3, 5 and 6 of section 30, township 63, north of range 11, west of the fourth principal meridian.

9. That the said Frank Hicks together with Myrtle M. Hicks, his wife, by deed of general war-
174 ranty bearing date the 21st day of October, 1897, duly executed, acknowledged and recorded in the office of the Register of Deeds of St. Louis County on the 18th day of February, 1899, conveyed the premises hereinbefore described to the plaintiff herein who now holds whatever title thereto enured to the said Frank Hicks under said patent; that neither the said Orillie Stram, or her husband or said Clark, Eaton, Fagan or Lonstorf were in any manner parties to the proceedings subsequent to

the said decision of the Secretary of the Interior, rendered on the 18th day of February, 1889, whereby said patent was issued and that the plaintiff and said Hicks at all times had full knowledge of all the right and claims of the defendants and each of them in and to the said lands; that the premises described in the complaint are and at the time of the commencement of this action were situated in the County of St. Louis and State of Minnesota. 175

10. That the findings or determinations of fact by the said William F. Vilas, Secretary of the Interior as aforesaid, were fully sustained by the evidence in said cause presented to him by the record in said appeal, except it is found as a fact by this court, that the improvements caused to be erected by the said Frank W. Eaton, upon the said premises consisted of a house about 14 by 16 feet in size, and it is further found as a fact that from the evidence before the Secretary of the Interior in said cause presented to him by the record upon said appeal, it did not appear that the scrip referred to in the decision of said secretary had passed through many hands or through any hands before coming into the hands of the said Frank W. Eaton, nor did it appear that the powers of attorney to locate said scrip and to convey the land located therewith had been executed by the said Orillie Stram years before the location thereof by the said Frank W. Eaton, but that on the contrary it appeared from the evidence before the secretary that said powers of attorney were executed by the said Orillie Stram about one week before the location of the said scrip by the said Frank W. Eaton, and that the said powers did not contain the names of the grantees. It is further 176 177

found as a fact that it did not appear from the evidence before the said secretary that the said scripee never saw the said lands; it did not appear from the evidence before the said secretary that she had sold the said scrip long prior to the location thereof; it did not appear from the evi-
178 dence before the said secretary that for a long time she directly and positively repudiated Eaton and Merritt as her attorneys in fact, denying that they acted for her in any capacity whatsoever.

CONCLUSIONS OF LAW.

1. That the said decision of the said Secretary of the Interior, by which said secrtary held said scrip locations to be invalid and attempted
179 to throw said lands open for public entry was erroeous and contrary to law and founded upon a misrepresentation and misconception of the law applicable to the case, in this, among other things, (a) in holding that the locations of the said pieces of scrip upon the said lands while they were yet unsurveyed was invalid because of the fact that the improvements were not made upon said land under the personal supervision and direction of the said
180 Orillia Stram and because she had not come in personal contact with the said land; (b) in holding that the said locations of scrip upon the said lands were illegal and invalid because of the fact of the execution of a power of attorney to Frank W. Eaton to locate the said scrip and by reason of the fact of the execution of a power of attorney to the said Orillie Stram to the said Leonidas Merritt to transfer and convey the said lands that should be located under the said pieces of scrip; (c) by

holding that the said scripee had no right to alienate the land itself before the location of the said scrip thereon or to make any contract in regard to the same or any power to another to grant and convey the same when the same should be acquired; (d) in holding that the execution of the said powers of attorney operated in law as an assignment of the said scrip and in holding that the said transactions were in violation of that portion of the said act of July 17th, 1854, prohibiting assignments of the said scrip; (e) in holding that the appropriation of said lands under and by virtue of said scrip and the adjustment of said scrip thereto and the location of the same thereon after said lands had been surveyed and the plat of the said township filed were invalid as an independent location upon surveyed lands because of the previous location held by said secretary to be ineffectual of said scrip upon said lands as unsurveyed lands without regard to the question of improvements, no intervening rights of any other parties having accrued. 181 182

2. That under and by virtue of the said scrip locations as hereinbefore found the said scripee Orillie Stram, and those claiming under her became the owners of said lands and entitled to have a patent therefor issued by the United States to and in the name of the said Orillie Stram, and that the said Frank Hicks and the plaintiff claiming under him at most acquired nothing more than the bare legal title to said lands by virtue of the said patent issued to the said Frank Hicks, as hereinbefore found; and, that further than that, the said plaintiff has no right, title or interest in or to the said lands or any part thereof. 183

3. That the defendant, Frank W. Eaton, is the owner of an undivided 13-36 of the said land described in the complaint and the defendant Merrill M. Clark is the owner of an undivided 9-36 thereof and the defendant Margaretha Lonstorf is the owner of the undivided 8-36 thereof and the
184 defendant, Richard H. Fagan, is the owner of an undivided 6-36 thereof and are entitled to the judgment and decree of this court adjudging them to be such owners thereof in the said proportions free and clear of any claim of any right, title or interest therein on the part of said plaintiff and entitled to the judgment and decree of this court adjudging that whatever legal title the said plaintiff holds in and to the said premises that it holds the same in trust for the said defendants in the
185 proportions above specified and that the said defendants are entitled to the judgments and decree of this court adjudging and directing that the said plaintiff shall convey said premises to the said defendants in the proportions above specified and that upon failure to so convey the same a certified copy of such judgment to be entered hereon may be recorded in the office of the Register of Deeds of the proper county and when so recorded that such judgment shall operate to transfer and con-
186 vey said lands to the defendants as fully as though such conveyance were executed by the said plaintiff.

4. That the said defendants are entitled to have judgment in this cause for their costs and disbursements to be taxed.

Let judgment be rendered and entered accordingly.

Dated and signed this 27th day of December, 1899.

S. H. MOER,
Judge of the District Court.

187

EXHIBIT A.

DEPARTMENT OF INTERIOR,

WASHINGTON.

February 18th, 1889.

HYDE AND McDONALD,

vs.

EATON AND STRAM.

188

SIOUX HALF-BREED SCRIP.

THE COMMISSIONER OF THE GENERAL LAND OFFICE,

Sir: I have considered the case of Thomas W. Hyde and Angus McDonald vs. Frank W. Eaton, as attorney in fact for Orillie Stram, nee Moreau, on appeal by the latter from the decision of your office, dated August 4th, 1888, holding for cancellation Sioux half-breed scrip, Nos. 19D and 19 E., located and adjusted as follows:

189

Scrip No. 19 D. upon lots 3, 5 and 6 and S. E. 1-4 of N. W. 1-4 Sec. 30, and that numbered 19 E. upon lots 1 and 2 and S. W. 1-4 of N. E. 1-4 and N. W. 1-4 of S. E.1-4, same section, T. 63, N. R. 11, W., Duluth, Minnesota.

It appears that Frank W. Eaton, as attorney in fact for said Orillie Stram, nee Moreau, a Sioux half-breed Indian, filed in the Duluth, Minne-

3. That the defendant, Frank W. Eaton, is the owner of an undivided 13-36 of the said land described in the complaint and the defendant Merrill M. Clark is the owner of an undivided 9-36 thereof and the defendant Margaretha Lonstorf is the owner of the undivided 8-36 thereof and the
184 defendant, Richard H. Fagan, is the owner of an undivided 6-36 thereof and are entitled to the judgment and decree of this court adjudging them to be such owners thereof in the said proportions free and clear of any claim of any right, title or interest therein on the part of said plaintiff and entitled to the judgment and decree of this court adjudging that whatever legal title the said plaintiff holds in and to the said premises that it holds the same in trust for the said defendants in the
185 proportions above specified and that the said defendants are entitled to the judgments and decree of this court adjudging and directing that the said plaintiff shall convey said premises to the said defendants in the proportions above specified and that upon failure to so convey the same a certified copy of such judgment to be entered hereon may be recorded in the office of the Register of Deeds of the proper county and when so recorded that such judgment shall operate to transfer and con-
186 vey said lands to the defendants as fully as though such conveyance were executed by the said plaintiff.

4. That the said defendants are entitled to have judgment in this cause for their costs and disbursements to be taxed.

Let judgment be rendered and entered accordingly.

Dated and signed this 27th day of December, 1899.

S. H. MOER,
Judge of the District Court.

187

EXHIBIT A.

DEPARTMENT OF INTERIOR,

WASHINGTON.

February 18th, 1889.

HYDE AND McDONALD,

vs.

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188

SIOUX HALF-BREED SCRIP.

THE COMMISSIONER OF THE GENERAL LAND OFFICE,

Sir: I have considered the case of Thomas W. Hyde and Angus McDonald vs. Frank W. Eaton, as attorney in fact for Orillie Stram, nee Moreau, on appeal by the latter from the decision of your office, dated August 4th, 1888, holding for cancellation Sioux half-breed scrip, Nos. 19D and 19 E., located and adjusted as follows:

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Scrip No. 19 D. upon lots 3, 5 and 6 and S. E. 1-4 of N. W. 1-4 Sec. 30, and that numbered 19 E. upon lots 1 and 2 and S. W. 1-4 of N. E. 1-4 and N. W. 1-4 of S. E.1-4, same section, T. 63, N. R. 11, W., Duluth, Minnesota.

It appears that Frank W. Eaton, as attorney in fact for said Orillie Stram, nee Moreau, a Sioux half-breed Indian, filed in the Duluth, Minne-

sota, local land office, on June 16th, 1883, the scrip above mentioned, and located the same on certain unsurveyed land in amount three hundred and twenty acres, which locations were subsequently adjusted by the local office and approved and posted by your office to embrace the tracts above described.

190 Said half-breed scrip bore date November 24th, 1856, and had been issued under the provisions of the Act of July 17th, 1854 (10 Stat., 304), to the Sioux half-breed named above.

July 20th, 1885, Angus McDonald presented at the local office a preemption application for lot 2, and the N. 1-2 of the S. E. 1-4 and S. W. 1-4 of N. E. 1-4 of said section 30, which that office rejected, because the N. E. 1-4 of the S. E.
191 1-4 was denominated swamp and overflowed land, and as to the residue of the tract because the date of settlement as alleged in the application to file did not antedate the unadjusted scrip location No. 19 E., with which it conflicted.

On the same day (July 20th, 1885), Thomas W. Hyde applied to make preemption filing for lots 5 and 6 and S. E. 1-4 of N. W. 1-4, and N. E. 1-4 of S. W. 1-4 of the same section (30), which application the local office rejected, for the reason
192 that the alleged date of settlement did not antedate the unadjusted scrip location, No. 19 D.

November 14th, 1885, a hearing was ordered by your office upon the application of McDonald and Hyde, who alleged "that the scripee never made any improvements whatever upon said land, either in person or by an agent or attorney, and that said land, at the date of the attempted locations, was unsurveyed and belonged to the class of land only locatable with such scrip after the

scripee shall have made improvements upon the same."

In support of the charges thus made was filed a copy of an affidavit (the original is now in the record), made October 9th, 1884, by the scripee, in which she denied ever having given to said Frank W. Eaton, either directly or indirectly, a 193
power of attorney, or any authority of any kind to locate said scrip or to erect buildings and make improvements on the land in controversy, or upon any other land for her use and benefit.

In refutation of the denial made as above by the scripee, Eaton filed copies of two powers of attorney given by him by said scripee and her husband, May 25th, 1883, conferring upon him the power and authority to locate said scrip, and to make the improvements, which under the Act of 194
1854, were necessary before location could be made on unsurveyed lands; also to do any other act necessary to be done in the premises, in order to secure a permanent and bona fide location, in the same manner as if done by them personally.

The case proceeded to hearing, which was had April 6th, 1886.

The register and receiver, after reference to the denial by the scripee that she had ever con- 195
stituted or appointed Frank W. Eaton her attorney in fact to locate the scrip or to make the improvements required for its location upon unsurveyed lands, also to the fact that her position up to date of hearing seemed to be that of one attempting to set aside powers of attorney wrongfully obtained from her; also to the endeavor of Hyde and McDonald on the day of the hearing to show that the scrip locations were illegal and

that they had bona fide preemption claims to the disputed tracts, found as follows:

1. The scrip in question was located upon unsurveyed lands on June 16th, 1883, more than one year before the preemptors settled, and was adjusted to the surveys July 21st, 1885, nearly
196 one year after settlement by said preemption claimants.

2. The record contains duly executed powers of attorney from the scripee and her husband to F. W. Eaton, giving him the full power to do all acts necessary "to perfect and secure a permanent and bona fide location" of the scrip.

3. Eaton, under said authority employed another to go upon the land and make suitable improvements, giving directions what improvements
197 to make and how to make them, which improvements were made for Eaton, and for the purpose claimed by him.

4. The scripee, in her complaint, while stating that she did not know Eaton and never authorized him to make improvements on these lands, admitted that she parted with the scrip and signed powers of attorney shortly before the location. She did not appear at the hearing to testify in support of the charges made by her.

198 5. She has never asked that the locations be cancelled and that the scrip be returned to her, but, on the contrary, she between the date of her complaint and the day of hearing did execute and deliver a deed of confirmation, acknowledging, ratifying and confirming all that had been done by Eaton as her attorney.

On these findings of fact, the local officers concluded that "there is nothing in evidence to

show that this scripee was misled or imposed upon by the defendant or his agents, or to controvert the fact that the scrip locations were effected in strict conformity with the usual accepted practice in such cases, and in accordance with law and the rules of the Land Department."

They accordingly held, in effect, that contestants had failed to make a case, and that the scrip locations should stand. 199

From that action contestants Hyde and McDonald appealed to your office, assigning six specifications of error, viz:

1. The register and receiver were without authority to decide the cause, and could only properly report the case with their opinion upon the facts to your office.

2. This so-called decision was contrary to the evidence. 200

3. It was contrary to the law.

4. It treated the case as if the controversy was between the scripee and her attorney in fact, whereas it grew out of contest by third parties, who claim to have shown that the scrip was fraudulent on the part of both the scripee and her grantees.

5. The local officers in their so-called decision failed to pass upon the vital question in the case, viz: Whether the land contained improvements made by or under the personal supervision or direction of the scripee, and for her personal use and benefit. 201

6. They erred in finding that a confirmatory deed made between two of the parties to a fraudulent entry could bar the right of subsequent bona fide applicants.

Pending these proceedings on appeal, to-wit: April 28th, 1887, Fred F. Huntress filed in the local land office applications to contest not alone the scrip locations, as your office seems to have assumed, but also the preemption claims of Hyde and McDonald. Said applications were by the
202 local office transmitted to your office, which under date August 30, 1887, returned them to the local office, with instructions that they be held subject to the final disposition of the case at bar. They have since been returned to the department and are now in the record before me.

Your office decision, proceeding to a review of the facts disclosed by the record, found that accompanying the scrip and applications to locate the same were what purported to be the original
203 powers of attorney, given May 25th, 1883, by the scripee and her husband, to Frank W. Eaton; that with each application was an affidavit by said Eaton, setting out that he under said powers of attorney had caused to be built upon each of the tracts upon which the scrip was located a house, 14 by 16 feet, one story high, of timber, covered with split shingles, with doors and windows; that he also had cleared one-half acre of each tract, and that said improvements were made
204 under the personal direction of the scripee, and for her personal use and benefit.

Your said office decision further recites that in the record are what purport to be original powers of attorney given by the scripee and her husband to Leonidas Merritt, granting him full power and authority to enter upon and take possession of any and all pieces or parcels of land in the State of Minnesota, which they then owned or might thereafter acquire, or become interested

in, by virtue of the location of the scrip in question; to prosecute and defend any suit at law in the courts of said State, and to grant, bargain, sell, demise, lease, convey and confirm said land, or any part thereof, by deed, conveyance, demise or lease, in the same manner as if performed by them individually. 205

Your said office decision further recites that in the record are certified copies of two warranty deeds, dated July 2d, 1883, and executed by said Leonidas Merritt, in the name of the scripee and her husband, under and by virtue of the power of attorney above mentioned, convey ing to Edward Byrne, James H. Powers and Joseph Clement, an undivided one-third interest in and to all land embraced in said scrip locations and involved in this controversy,—the considera- 206
tion named in each being $25,000.00; that there are also in the case certified copies of two warranty deeds, bearing date July 6th, 1883, executed in the same manner by the same parties of the first part, conveying to Frank W. Eaton an undivided two-thirds interest in and to the same tracts of land, the consideration named in each being $25,0000.00; that Joseph Clement, one of the grantees of an undivided one-third interest, above mentioned, on August 28th, 1883, as appears by certified copies 207
of two deeds of warranty on file, conveyed to one Nicholas Lansterf his undivided one-ninth interest in and to said tracts, the consideration named in each being $250.00; that on the next day (August 29th, 1883,) as shown by certified copies on file, James H. Powers, another of the grantees of an undivided one-third interest, executed two similar deeds conveying to said Lansterf his undivided one-ninth interest in and to said tracts

the consideration named in each deed being $350.00.

Your office decision also mentions certain quit claim deeds (certified copies of which are in the record), executed and given by the several parties (except Clement), who made the above mentioned
208 warranty deeds, the pupose of the quit claim deeds being to correct imperfect descriptions in the prior warranty deeds, which together embrace all the land covered by the scrip locations.

As a result of the conveyances above recited, your office decision, finds that such title as passed under said conveyance now rests as follows:

Two-ninths interest in Nicholas Lansterf by conveyance from Powers and Clement. One-ninth interest in Edward Byrne under original con-
209 veyance from Merritt, as attorney in fact for the scripee, with power to sell; two-thirds (six-ninths) interest in Frank W. Eaton, under conveyance from Merritt, as attorney in fact.

Your office then holds that "these several deeds of conveyance and release conformed no greater title upon the grantees than the grantors had, which was simply a right to these tracts of land, subject to the final adjudication and appro-
210 val of these locations."

It then makes reference to the fact disclosed by the record that prior to the hearing before the local office, to-wit, on March 31st, 1886, the scripee and her husband joined in a deed of confirmation, ratifying and confirming all and singular the acts of Frank W. Eaton and Leonidas Merritt, relative to the tracts in question, done and performed by them under the respective powers of at'orney, given as hereinbefore described.

Proceeding, then, to a consideration of the testimony taken at the hearing, your office decision finds that it "establishes by a clear preponderance the fact that said Eaton by virtue of his power of attorney employed Edward Byrne to make the improvements upon the respective tracts in question, and that Byrne secured the services of Powers and Clement to assist him in the matter," that Eaton admits that the power of attorney under which he acted was executed by the scripee in blank; that he never saw the scripee until March 31st, 1886, never saw the land, and did not know whether said scripee ever saw it or not; that the deed of confirmation by the scripee appears, so far as she and Eaton are concerned, to remove any objection to the acts previously performed by the latter, under and by virtue of his said power of attorney; that the affidavits accompanying the location of said scrip appear to fulfill the requirements of the circular of May 28th, 1878 (5 C. L. O., 126). 211 212

This would seem on its face to point to an adjudication in favor of the scrip locations; but your office decision further proceeds to say that the only other question left to pass upon touching the legality to these locations, is, whether the power of attorney given by the scripee to Frank W. Eaton, by virtue of which he made the locations, could carry with it, under the law; the power and authority to make the improvements, which were necessary as a prerequisite to valid location on the scrip on unsurveyed land. On this question your office decision concludes, that since the evidence shows clearly that the scripee in this case never saw the land, or the improvements, or had 213

anything whatever to do therewith, and since the circular referred to, supra, requires that the Indian shall have a direct connection with the land, and claim the same for his or her personal use, the scrip locations are not valid and should be cancelled, as speculative and made with an evident
214 intent to evade the law, rather than to comply in good faith with legal requirements.

Upon a careful examination of the entire record, I find the facts to be substantially as stated by your office decision and outlined herein.

Epitomized, they are as follows:

The scripee disposed of her scrip, surrendering possession thereof to some one now unknown. Said scrip was accompanied by two powers of attorney, executed in blank, one giving authority
215 to some one not then named to locate the scrip; the other, giving a like authority to sell the land located upon. The scrip, after many years and after passing through several hands, lodged in the hands of Frank W. Eaton, who thereupon filled up the blanks in the power of attorney to locate, inserting his own name as that of attorney in fact for such purpose. He employed others to make slight improvements on the lands in question (then unsurveyed) and after such improve-
216 ments, which were scarcely deserving of the name, he located the scrip as attorney in fact for Orillie Stram, the scripee.

The blanks in the other power of attorney (that to sell) were filled up by inserting the name of Leonidas Merritt, who it appears was a business partner of said Frank W. Eaton, and said Merritt, as attorney in fact of the scripee, executed certain warranty deeds, tranferring and passing title to the lands covered by the scrip lo-

cations to certain parties therein named, it appearing that said parties were Eaton, who had made the locations, and three men, Edward Byrne, James H. Powers and Joseph Clement, who had been by him, or through his agency, employed to make the improvements above mentioned.

Money consideration was expressed in said deeds, but it is apparent from the evidence that the real consideration, so far as Byrne, Powers and Clement were concerned, was what they had done in making the improvements. They got an undivided one-third interest. The residue went to Eaton. 217

The scripee never saw the land. At the date of the location she had never seen Eaton, who acted as her attorney in fact, and did not then know that there was such a person in existence. She had, as a matter of fact, sold the scrip long prior to the location, and had no personal interest in the land, nor were the improvements made for her personal use and benefit. It was a matter of no moment to her where the scrip was located, or whether it was located at all or not. Her actual interest in the matter ceased when she disposed of the scrip. It was admitted by her so-called attorneys in fact that she was to have no interest in the land. For a long time she directly and positively repudiated Eaton and Merritt as her attorneys in fact, denying that they acted for her in any capacity whatever. Afterwards and but a few days prior to the hearing, she ratified by deed what had been done by them. 218 219

This ratification, it is evident, was procured at the solicitation of Eaton or Merritt, or both, and for a consideration. But such ratification does not change the fact that the improvements

and location, though made under the guise of a power of attorney, were made, not under the direction and in the interest of the scripee, but for the benefit solely of another not even known to the scripee, viz: Eaton, who had inserted his name as attorney in the power executed in blank. If
220 the location of the scrip was illegal and invalid, then the deed of ratification could not give it validity—could not vitalize that which originally had not in it the germ or essence of legal vitality.

This case is in all essential particulars like that of Joseph W. Allen, et al., vs. Lewis Merrill, et al., decided by me this day, 8 L. D., 207—review denied, 12 L. D., 138, so far as the method of making the scrip locations is a matter of concern and the reasons of that case are in this particular ap-
221 plicable to this. Following the ruling of that case, I must hold that the scrip locations here in question are invalid, and your office decision so holding is affirmed.

There remain for disposition the rights of Hyde and McDonald. It is asserted that the case is not in such a position that any determination ought to be made as to these claims, and that must be determined by a view of the record and proceedings taken.

222 It appears that on the 9th day of October, 1884, Hyde filed with the Register a paper addressed to the Register and Receiver, in the caption described as being "An application for leave to contest the pretended entry, with Sioux half-breed Certificate No. 19 E., for one hundred and sixty acres, issued to Orillie Moreau, on November 24th, 1856, and attempted to be located on the following described land, to-wit: "describing the land, and that in that application, after the alle-

gation attacking the location, the following appears:

"That said contestant is a single man over 21 years of age, and has declared his intention to become a citizen of the United States, that he does not own 320 acres of land in any State or Territory, that he has not left land of his own in this 223
state to reside on the public land, and that he has never heretofore exercised his right under the preemption law.

"That heretofore, to-wit: on the 20th day of August, A. D., 1884, the said contestant made settlement on the said described land with a view to inhabiting and cultivating the same for his own exclusive use and benefit, and intends to make his Declaratory Statement for said land under the Preemption Laws of the United States as soon 224
as the surveyed plat of township 63, N. of range 11, W. of 4th P. M., shall be returned to the United States Land Office at Duluth, Minn.

"Wherefore your petitioner requests that this contest may be granted and a day set for the hearing thereof."

Attached to this application was an affidavit of verification, sworn to on the 29th of September, 1884.

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This application is stated, in the Commissioner's order for a hearing, hereinafter mentioned, to have been transmitted by the Register of the General Land Office October 31, 1884, and to have been supported by a copy of an affidavit of the scripee, which has been before spoken of.

On the 20th day of July, 1885, Hyde made application to file the Declaratory Statement previously mentioned in this opinion, which was re-

jected, and thirty days allowed by the Register for appeal. On the 25th day of August, 1885, the Register transmitted Hyde's appeal from that decision, to the General Land Office.

All the proceedings on the part of McDonald in respect to the land claimed by him correspond
226 exactly with those of Hyde as to the land claimed by him; and were made by the same attorneys, and at the same time respectively.

Afterwards, on the 14th of November, 1885, the Commissioner of the General Land Office, by letter "C" of that date, ordered a hearing, in which, after reciting the allegations for and against the validity of the scrip, he proceeds:

"In view of the conflicting statements respect-
227 ing the legality of these locations, I deem it proper that a hearing should be held, that the respective parties may have an opportunity to submit such proof as they may have in support of their allegations, and that this office may be possessed of all the facts possible in the matter; and the same is hereby ordered.

"You will notify all parties in interest of the time and place of hearing, and at the proper time thereafter you will transmit to this office the testi-
228 mony taken thereat with your opinion thereon."

Under this order of the Commissioner, when the hearing came to be held, it seems to have been assumed by all parties that the rights of Hyde and McDonald as pre-emptors were involved; and voluminous testimony was taken, not only with respect to the rights of the scrip locators but with respect to the rights of the pre-emptors. Upon the conclusion of the hearing, the Register and Receiver, being of the opinion that the scrip loca-

tions were valid, disposed of the pre-emptor's claims as follows:

"The bona fides of Hyde and McDonald or their rights under the pre-emption law need not be considered here, as the question of their claims is contingent upon their ability to set aside the scrip locations, and thus render the land subject 229
to pre-emption settlement.

Upon this showing of fact, we conclude that the contestants have failed to make out a case, and that the proceedings should be dismissed. It is so ordered.

The decision of the Assistant Commissioner makes no allusion to the contest in regard to Hyde and McDonald, simply reversing the decision of the local officers, as to the validity of the scrip location. 230

Upon examination of the testimony taken at the hearing the following appears in the examination of Hyde:

Q. Did you have any contract with Mr. White in writing or otherwise, by which he was to receive any compensation of interest in the land? A. Yes, there was a contract.

Q. Where is it? A. I don't know.

Q. When and where did you last see it? A. I have not seen it since it was drawn up by Mr. 231
White.

Q. What did it contain? A. It contained that, when I proved up, I was to secure him a one-half interest.

McDonald testified as to the land covered by his pre-emption claim:

"Judge White has no interest in it. There is an understanding that he is to have an interest

in it if we succeed in this trial; he is to have a half interest. * * * The arrangement with Hyde is the same as mine. White is to have half if we succeed in this. James H. Power is also to have an interest in it if we succeed. I don't know how much he is to get. I agreed to give him an interest
232 if we succeeded in getting the land."

He further testified:

"Mr White is paying the expenses of the claim with the understanding that he is to have half of it after we secure it."

Again—

"I am to let him have an interest in the land when I get it to pay him for his time and services. The contract I have with Mr. White for his one-half is in writing."

233 When asked how he could give White a half interest, unless he should deed to him one-half, he answered: "I could not very well."

White, when put upon the stand, testified that after diligent search he was unable to find the contract.

Further evidence than that above quoted from the testimony of Hyde and McDonald is unnecessary to show that they have, by the contracts which they admit having made, disqualified
234 themselves from taking the land under the pre-emption law.

Counsel, in one of the briefs in the case, aver as to McDonald that the records of your office will show that he has already exhausted his pre-emption right by having made a pre-emption filing, and, having filed a formal relinquishment of this claim thereunder. I have not attempted to test the correctness of this averment by an in-

spection of the records of your office. It is deemed unnecessary in view of the testimony of Hyde and McDonald, the pre-emption claimants, as to their contract to sell.

The testimony of the two claimants establishes beyond question that the statements made in their application to contest, that their settlements were made wholly for their own use and benefit, was not well founded, and that it would be impossible for either of them to made the affidavit required by section 2262 R. S., "that he has not, directly or indirectly, made any agreement or contract, in any way or manner with any person whatever, by which the title which he might acquire from the government of the United States should inure in whole or in part, to the benefit of any person except himself." 235 236

In view of this record and proof, it appears to be the duty of the Department to dispose of these claims of pre-emption. A hearing has been had upon the validity of them, in which the evidence was adduced fully, and upon which the material facts appear to have been sufficiently elicited to leave no doubt. Whatever rights they might have established would, under a familiar rule of the department, have been regarded as fixed at the time when they made their application to file. Their application to file must be treated as if they had been allowed, subject to the rights of others, and it now appears that they ought to be cancelled, if filed. Their appeal (which is sent up in the record) from the rejection of their applications, appears to bring the whole matter before the department; and in the exercise of the power of supervision vested in the department by law, it seems to be demanded that upon this disclosure 237

of facts the proper action should be taken. If there had been no hearing upon this question, the proper action would be, upon a suggestion of such information, to direct a hearing to be had; but inasmuch as a hearing has been had and as the testimony which shows the absolute impossibility of
238 perfecting a pre-emption title in these claimants has proceeded from themselves, testifying under oath, there appears no reason for directing a further hearing.

If their Declaratory Statement were now to be filed as of that date, the duty would rest on the Department to cancel them, in accordance with the ordinary practice in such cases.

This leaves to be considered one other branch or feature of the case as now presented by the
239 record. On April 28th, 1887, one Fred T. Huntress filed formal applications to contest the pre-emption claims of said Hyde and McDonald, respectively, his charge being that said claims were initiated not in good faith to appropriate the lands to their own exclusive use, but for speculative purposes, they having agreed to convey title to other parties when procured by them.

Huntress, in his affidavits of contest, asks that a hearing be ordered to enable him to sub-
240 stantiate by competent proof the charges made.

Counsel for Huntress, however, argues in a brief recently filed that further hearing is unnecessary, and that the asserted claims of Hyde and McDonald may properly be rejected and finally disposed of on the record as it now exists.

It is therefore asked that such action be taken and the scrip locations, as well as the pre-emption claims of said Hyde and McDonald being disposed

of and the record cleared of any claim to the land, that he (Huntress) be accorded the preferred right of entry on said lands.

Notwithstanding the foregoing judgment to some extent was anticipated by the petition, this proceeds on the record all of which had been made up before Huntress came into the case as a 241
pretended contestant, and was in no way or manner aided by what he did. His acts had nothing whatever to do with bringing about the rejection of either the scrip claims or those of Hyde and McDonald. Besides, an application to file a declaratory statement is hardly subject to contest. He is, therefore, in no position to claim a preferred right of entry as a successful contestant, and his application to be so considered and treated must be denied. This disposes of all the claims, 242
and asserted claims to the land, so far as disclosed by the record before me, and leaves the land in question open to disposal under the public land laws of the United States applicable thereto, and such is the judgment of this Department.

The papers in the case are herewith returned.

Very respectfully,

WM. F. VILAS, Secretary.

243

EXHIBIT B.

This indenture made this 31st day of March in the year of our Lord one thousand eight hundred and eighty-six between Orillie Stram (before marriage Orillie Moreau) and Roman Stram, her husband, of Crawford County and State of Wisconsin, parties of the first part and Frank W.

Eaton of Duluth, St. Louis County, State of Minnesota, party of the second part.

Witnesseth, that whereas the said Frank W. Eaton, as our duly constituted and appointed attorney in fact did on the 16th day of June, A. D. 1883, caused to be filed in the U. S. Land Office at
244 Duluth, Minnesota, an application for certain lands and Sioux half-breed scrip No. 19 D. and No. 19 E., each for 160 acres of land, thereby by virtue of the laws of the United States and conditions precedent which had been complied with by the said Frank W. Eaton our attorney in fact as aforesaid vesting the title to the said land as described in said application by metes and bounds in me the said Orillie Stram (the said description being by metes and bounds for the reason that the
245 said land had not yet been surveyed by the United States) which said land has since been surveyed by the government and a plat thereof filed in the United States Land Office at Duluth, Minnesota and upon said plat the aforesaid scrip and entry was adjusted July 21st, A. D. 1885, thereby specifically and perfectly describing the land filed upon for me the said Orillie Stram by the said Frank W. Eaton and intended to be entered on June 15th, A. D. 1883, in the name of the said Orillie Stram
246 by our attorney in fact, the said Frank W. Eaton, and,

Whereas, we, the said Orillie Stram and Roman Stram did on the 25th day of May, A. D. 1883, by two certain powers of attorney, duly executed, acknowledged and delivered by us to Leonidas Merritt of Duluth, St. Louis County, State of Minnesota, which said powers of attorney were duly recorded in the office of the Register of Deeds for St. Louis County, Minnesota, in Book "A" of

Powers of Attorney on pages 613 and 614, therein and thereby constituting and appointing the said Leonidas Merritt the attorney in fact of the said Orillie Stram with full power and authority in her name and stead to grant, bargain, sell, demise, lease, convey and confirm the said lands which we then owned or which we might thereafter acquire or become seized of under and by virtue of locations of Sioux half-breed scrip No. 19 E. for 160 acres of land and No. 19 D. for 160 acres of land issued to me the said Orillie Stram, and, 247

Whereas, the said Leonidas Merritt as our attorney in fact on the 30th day of October, A. D. 1885, did by warranty deed duly executed by him convey to the said Frank W. Eaton an undivided seven-ninths, part and interest in said lands, which according to the said survey and plat and 248 in said deed are described as follows, to-wit: "All of the following pieces, parcels and tracts of land situate in the Counties of St. Louis and Lake in the State of Minnesota, described as follows, to-wit: Lots one (1), two (2), three (3), five (5) and six (6), the southwest quarter of the northeast quarter, the southeast quarter of the northwest quarter of the northwest quarter and the northwest quarter of the southeast quarter, all being in section thirty (30) in township No. sixty-three 249 (63) north of range eleven (11), west of the 4th principal meridian in Minnesota, containing according to the government survey, three hundred thirteen and 61-100 (313.61) acres of land more or less, which said warranty deed was upon the 3rd day of November, A. D. 1885, at 2 o'clock P. M., duly recorded in the office of the Register of Deeds for St. Louis County, Minnesota, in Book A 3 of Deeds, page 350, and in the office of the

Register of Deeds for the County of Lake in the State of Minnesota on the 5th day of December, A. D. 1885, at 3 o'clock P. M., in Book D. of Deeds, page 205. Now, therefore, we the said Orillie Stram and Roman Stram, parties of the first part, do hereby fully ratify and confirm the said conveyance of said land as above described to the
250 said Frank W. Eaton by our said attorney in fact, the said Leonidas Merritt and do hereby and herein fully ratify and confirm all and every act, conveyance made and matter and thing done by our said attorney in fact, Leonidas Merritt, under and by virtue of the said power of attorney as aforesaid. For the purpose of more effectually ratifying and confirming the acts of our said attorney, Leonidas Merritt, and in consideration of the sum
251 of one (1) dollar to us in hand paid by the said party of the second part and receipt whereof is hereby confessed and acknowledged, have granted, bargained, sold and conveyed and by these presents do grant, bargain, sell and convey unto the said Frank W. Eaton, party of the second part, his heirs or assigns forever an undivided seven-ninths part and interest in the following described tracts, pieces or parcels of land situate in the Counties of St. Louis and Lake and State of Minnesota, known and described as follows, to-wit:

252

Lots one (1), two (2), three (3), five (5) and six (6). The southwest quarter of the northeast quarter, the southeast quarter of the northwest quarter and the northwest quarter of the southeast quarter, all being in section thirty (30) in township No. sixty-three (63) north of range No. eleven (11), west of the 4th principal meridian in Minnesota, containing according to the govern-

ment survey three hundred thirteen and sixty-one hundredths (313.61) acres more or less.

To have and to hold the same together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining to the said party of the second part, his heirs and assigns forever and the same parties 253
of the first part for their heirs, executors and administrators, do covenant with the said party of the second part, his heirs and assigns forever, that they are well seized in fee of the said land and premises aforesaid, and have good right to sell and convey the said land in manner and form aforesaid and that the same is free and clear from all incumbrances; and the above bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, 254
against all persons lawfully claiming or to claim the whole or any part thereof the said parties of the first part will warrant and defend.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

ORILLIE STRAM, (Seal.)
Formerly Orillie Moreau.

ROMAN STRAM.

Signed and delivered in 255
presence of
JAC. RAFFAUF.
ALEX. RAFFAUF.

STATE OF MINNESOTA, COUNTY OF CRAWFORD—

I, Jac. Raffauf, a notary public within and for said County do hereby certify that on the 31st day of March, A. D. 1886, personally came before me Orillie Stram, formerly Orillie Moreau and Roman
256 Stram, her husband, to me well known to be the same person described in and who executed the foregoing instrument and they acknowledged that they executed the same freely and voluntarily for the uses and purposes therein mentioned.

JAC. RAFFAUF,
(Seal.) Notary Public,
For Crawford Co., Wisconsin.

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257 STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss. District Court, Eleventh Judicial District.

THE MIDWAY COMPANY, Plaintiff,

vs.

FRANK W. EATON, ET AL., Defendants.

258

MEMORANDUM.

The vital question in this case relates in my judgment, to the location of the scrip of Orillie Stram, nee Moreau.

Was the location of such scrip valid? If this question is answered in the negative the case must be determined in favor of plaintiff, if the answer be in the affirmative the defendants must prevail.

The Honorable Secretary of the Interior in his dicision, under date of February 18th, 1889, (a copy of which is attached to the Findings of Fact in this case), held such location INVALID.

Was the Honorable Secretary in error in so holding?

The scrip in question was issued to Orillie Stram nee Moreau, under the Act of Congress of July 17th, 1854, (10 Stat. p. 304). 259

Such scrip might be located upon any unoccupied land subject to pre-emption or private sale, but it was expressly provided by said Act that, no transfer or conveyance of such scrip should be valid.

The provision contained in the Act being as follows: "No transfer or conveyance of any of said certificates or scrip shall be valid." It will be observed that alienation of the land, acquired by the location of the scrip, is not, in express terms, prohibited. That there is a marked distinction between prohibition of alienation of the scrip and prohibition of alienation of the land acquired by the location of the scrip seems clear. 260

The Supreme Court of the United States in Myers vs. Croft, 20 L. C. P. Co., pg. 562, recognizes this distinction. I am of the opinion that the provision cited did not prohibit the alienation of the land to be acquired by location of the scrip. Was the location of the scrip under the power of attorney to Eaton valid? 261

It will probably be conceded that had there been nothing further in this case than a power of attorney to Eaton to locate the scrip, and had Eaton proceeded under such power to locate the land in question, for and on behalf of Orillie

Stram nee Moreau and for her use and benefit alone, that such location would have been valid and that said Stram would have been entitled to her patent in due course from the United States. It is claimed, however, that by reason of the fact, that another power of attorney was given to Merritt, authorizing him to convey that land acquired
262 under the scrip location made by Eaton, in the name of Stram, and that by reason of the fact that, under the agreement, the scrip as located was not to inure to the benefit of Stram, that such facts rendered such location invalid and that Stram herself therefore acquired no legal right to the property, and that the Land Office Department upon the facts being brought to its attention, had the right, and it was its duty to cancel such scrip
263 location and declare the lands open for entry without regard to such scrip location. In order to determine this question it is necessary to get at the object of the prohibition of alienation of the scrip, contained in the Act of 1854. There being no prohibition against alienation of the land, it would seem that it could not have been for the protection primarily of the half-breed, but must have been for the protection of the government itself. The
264 government had agreed to give scrip which might be located on certain lands; if the scrip were made assignable the Land Office might have been constantly involved in settling questions as to whether or not any assignment of the scrip had, in fact, been made; if the scrip were made unassignable no such dispute could arise as in every case, the land, itself, would be entered in the name of the original owner of the scrip, thus accomplishing the purpose of the law to effect and exchange

of lands with the half-breeds. After the land was located in the name of the original scripee, it could be no concern of the government as to what became of it, for no provision was made in the law concerning it, but the scripee was left as a free agent to handle the land as best suited him. The prohibition against alienation prevented any transfer or conveyance of the scrip itself. This was not permitted to be done directly, and it follows that it could not be done indirectly. It would seem therefore that if the power of attorney to Eaton to locate, together with the power of attorney to Merritt, to convey any lands acquired under the scrip located by Eaton, coupled with the fact that under the agreement Stram had no further interest in the scrip or the land to be located thereunder, amounted to a transfer or conveyance of the scrip itself that such transaction was illegal and within the prohibition of the statute and void. In the case of Felix vs. Patrick, 145 U. S. (Sup. Court Reporter) pg. 862 et seq., the court says:

265

266

"The device of a blank power of attorney and quit claim deed as doubtless resorted to for the purpose of evading the provision of the Act of Congress that no transfer or conveyance of the scrip issued under such Act should be valid. This rendered it necessary that the scrip should be located in the name and for the benefit of the person to whom it was issued; but from the moment the scrip was located, and the title of the land vested in Sophia Felix, it became subject to her disposition precisely as any other land would be. In order therefore for the purchaser of this scrip from Sophia Felix to make the same available, it

267

became necessary to secure a power of attorney or a deed of the land.

"As the bill alleges that Patrick obtained possession of these instruments while still in blank, he is clearly chargeable with notice that they were intended as a device to evade the law
268 against the assignment of scrip."

"Having then no right to locate the scrip for his own benefit, he must be deemed to have located it for Sophia Felix, and as her representative."

This case seems to assume that the location WAS VALID, but that the quit claim deed, being a device to evade the prohibition of the Act of Congress, was ineffective to pass the title to Patrick and that he was, therefore, a trustee for Felix. In the case at bar, conceding the power of attor-
269 ney to Merritt, to have been a device for evading the prohibition against the transfer or convevance of the scrip, would not the only result be to place the title to the land in Orillie Stram? The power of attorney to locate was, in and of itself, a perfectly legal instrument, not transgressing either in spirit or letter the prohibition contained in the statute. How then can it be said that because the parties executed another and independent instrument, which was intended to evade the pro-
270 hibition, that it rendered the first and otherwise valid instrument invalid? The land WAS located under a valid power; not even subject to a parol explanation, Gilbert vs. Thompson, 14 Minn., pg. 414, Gil.

Title was obtained to the land under such scrip location in the name of Orillie Stram nee Moreau, all that the government ever contracted should be done. Who was injured? Clearly not Stram, because she gave a power to locate

and affirms that she wanted the land. Certainly not the government for it had agreed to give Stram certain land for the scrip and had carried out its agreement.

But the plaintiff urges that Stram had given a power of attorney to convey the land and had no further interest in the land, therefore her lo- 271
cation was invalid. Under the doctrine announced in Patrick vs. Felix, giving it the most liberal construction that can be urged, the power of attorney to convey was invalid and of no force and effect and without regard to what the parties intended or attempted to do the equitable title was still in Stram. Suppose that the transaction in this case had been as follows: Stram gave a power of attorney to Eaton to locate the scrip and at the same time, by parol, agreed that as soon as 272
the scrip was located she would give to Eaton a deed to the land so located that the consideration for such parol agreement was the sum of $500.00 in hand paid, and that Stram under such parol agreement had agreed that she neither had not claimed to have any further right, title or interest either in the scrip or the land to be located thereunder. Pursuant to such agreement the scrip was located: Upon contest it was made to appear that such a parol agreement had been entered 273
into between Stram and Eaton.

Would it in any way invalidate the scrip location which was made under a power regular upon its face. Clearly the parol agreement has no effect, for it was void under the statute of frauds and no evidence of it could be received. How could it affect the power to locate? Is there under the doctrine announced in Felix vs. Patrick any distinction to be drawn between an oral agree-

ment to convey and one evidenced in writing so far as it affects the location of the scrip. The oral agreement is void for two reasons:

1st. The Statute of Frauds.

2nd. It being an attempt to evade the prohibition against alienation contained in the Act of
274 Congress.

The written agreement is void for but one reason, viz: The prohibition of the Act of Congress:

It is a rule so well known as to need no citation of authority that the valid acts of parties will always be upheld, and that where an instrument contains provisions some valid and some invalid that full force and effect will be given to the valid provisions and that those held invalid will be dis-
275 regarded as of no force or effect; treated as mere surplusage. This rule of construction always obtains unless the valid and invalid provisions are so intimately related as to be incapable of separation, in which case the whole instrument must fail.

In the case at bar we have:

1st. A power of attorney to Eaton to locate the scrip,—standing alone its validity is conceded.

2nd. A power of attorney to Merritt to con-
276 vey certain lands to be secured under the scrip location, coupled with a paroi agreement, that the principal shall have no further interest in either the scrip or land.

It is apparent that after the scrip is located in the name of the scripee, that she has no further interest in the scrip. By the act of location the scrip becomes the property of the United States and its contract is cancelled. Nothing then re-

mains but the land. In relation to this the scripee has made an agreement (power of attorney) which is of no force or effect. Her attempt and Eaton's attempt to avoid the prohibitory portion of the Act of Congress are unavailing, the title still remaining under the law in the scripee. She needs no protection for the law gives it to her fully and 277
absolutely. The government needs no protection for it has given what it contracted to give. The scripee not needing the good offices of the government, and the government not having been in any way imposed upon, the need for its services in the matter is at an end, and it has merely the clerical duty of issuing to the scripee her patent in the usual course of business.

It is true that the government might have said upon all the facts presented that "Stram and 278
Eaton TRIED to avoid one of the provisions which I had made relative to the scrip, which I issued to Stram, but owing to the law of the land as announced in Felix vs. Patrick, the attempt was a signal failure and I have no further interest in the matter. Stram has her land, the power of attorney to Merritt and the deed to Eaton to the contrary notwithstanding.

I have my scrip and the contract oringinally made by me is settled. This being so I now rele- 279
gate Orillie Stram to the courts in common with all other of my citizens."

In my judgment the Honorable Secretary of the Interior erred in holding such scrip location invalid. As a matter of law he should have awarded the land in controversy to Orillie Stram nee Moreau. As Orillie Stram nee Moreau has given a subsequent deed of the premises in controversy to Eaton and as it is conceded that Eaton and his

grantees hold whatever title Orillie Stram nee Moreau may have had, it follows that the plaintiff's cause of action fails and that judgment should be entered in favor of the defendants.

It has accordingly been so ordered.

S. H. MOER, Judge.

280 Endorsement of the original filed in my office at .... o'clock ...M., Dec. 27, 1899.

GEO. F. CHESTER,
Clerk of District Court.
By A. J. TAYLOR, Deputy.

STATE OF MINNESOTA, COUNTY OF ST. Louis. District Court, Eleventh Judicial
281 District.

THE MIDWAY COMPANY, Plaintiff,

vs.

FRANK W. EATON, LEONIDAS MERRITT, RICHARD H. FAGAN AND MERRILL M. CLARK, Defendants.

282

It is stipulated and agreed by and between the parties to this action, that immediately upon and after the filing of the Findings of Fact and Conclusions of Law by the Court herein, that application may be made to the Court for further findings if deemed necessary by either party hereto without notice to the other parties and may also in like manner move for a new trial herein. The object of this stipulation is to insure what either

party hereto shall deem full and complete Findings or Refusals to find by the judge who tried said cause, and whose term of office expires on or about the 1st day of January next.

Dated Dec. 23rd, 1899.

WALTER AYERS AND
P. H. SEYMOUR, 283
Attorneys for Plaintiff.

J. L. WASHBURN AND
W. D. BAILEY,
Attorneys for Merritt, Clark & Fagan.

FRANK CUTTING,
L. C. HARRIS AND
TOWNE & HARRIS,
Attorneys for Frank W. Eaton.

PHELPS & McCLINTOCK,
AND WM. B. PHELPS, 284
Attorney for Margaretha Lonstorf.

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss. District Court, Eleventh Judicial District.

THE MIDWAY COMPANY, Plaintiff, 285

vs.

FRANK W. EATON, ET AL., Defendants.

STIPULATION.

It is stipulated, that the annexed is a full, true and correct copy of the evidence, and all thereof, introduced upon the trial of the above

cause, and a full and correct record of all of the proceedings had upon said trial, including the rulings of the court. The right to make proposed amendments thereto is hereby waived and the annexed may be allowed and settled by the court without notice as the case in the above entitled
286 cause.

WALTER AYERS AND,
P. H. SEYMOUR,
Attorneys for Plaintiff.
J. L. WASHBURN AND
W. D. BAILEY,
Attorneys for Merritt, Fagan & Clark.
TOWNE & HARRIS,
Attorneys for Frank W. Eaton.
WM. B. PHELPS,
287 Attorney for Margaretha Lonstorf.

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss. District Court, Eleventh Judicial District.

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288 THE MIDWAY COMPANY, Plaintiff,

vs.

FRANK W. EATON, ET AL., Defendants.

TESTIMONY AND RECORD OF PROCEEDINGS HAD ON TRIAL.

This cause coming on for trial at the Regular June Term of the District Court of the Eleventh

Judicial District of the State of Minnesota, held at the Court House in the City of Duluth, within and for the County of St. Louis, and state aforesaid, on the 12th day of June, A. D. 1899, before—HONORABLE S. H. MOER, Judge, without a Jury.

Walter Ayers and P. H. Seymour appearing as 289
attorneys for plaintiff; Washburn, Lewis and Bailey appearing as attorneys for Merritt, Clark and Fagan; L. C. Harris and Frank Cutting appearing as attorneys for F. W. Eaton; W. B. Phelps appearing as attorney in behalf of defendant Lonstorf.

Testimony is introduced and proceedings are had herein as follows:

The corporate character of the plaintiff and its 290
grantors, The Germania Iron Company, is admitted.

MR. AYERS:

I offer in evidence from the original records of St. Louis County,—the same being admitted for the purpose of this action to be now here in open court,—the record of a patent from the United States Government to Frank Hicks, bearing date the tenth day of May, 1898, recorded in Book D of Patents in the Office of the Register of Deeds of St. Louis 291
County on the 18th day of February, 1899, at page 269. Conveying to the patentee lots numbered 3, 5 and 6 of section thirty, township sixty-three, range eleven west, in Minnesota.

(Received without objection. Copy page 78.)

MR. AYERS:

It is admitted that these books, parts of which I offer in evidence, are part of the original records

of St. Louis County, in the office of the Register of Deeds?

MR. HARRIS:

As far as that patent is concerned, yes.

MR. AYERS:

To save bringing them up?

292 MR. HARRIS:

Oh, yes, as far as I am concerned. I have no objection.

MR. AYERS:

Is it admitted by all the counsel that these books, parts of which I shall offer in evidence are the original records from the office of the Register of Deeds of St. Louis County, Minnesota?

(It is so admitted.)

293 MR. AYERS:

I now offer Book 136 of Deeds at page 42 of St. Louis County records, being record of a deed bearing date October 21st, 1897, a deed of general warranty, made by Frank Hicks and wife to the Midway Company, conveying the lands in question.

(Received without objection. Copy page 80.)

MR. AYERS:

294 I also offer in evidence from the original records of Lake County, Minnesota, Book J., at page 580, being the record of Register and Receiver's receipt issued by the United States to Frank Hicks for the premises in controversy in this action, bearing date October 20th, 1897.

(Received without objection. Copy page 197.)

I offer in evidence certified copy of the decision of the Secretary of the Interior in the case of

Hyde and McDonald against Eaton and Stram, bearing date February 18th, 1889.

(Received without objection and marked Ex. A.

Copy of Exhibit A. page 12.)

MR. AYERS:

I also offer in evidence certified copies of the 295
testimony of F. W. Eaton and Edward Byrne and of exhibits F. G. C. and H. mentioned in said testimony, in the case of Thomas W. Hyde, et al., vs. F. W. Eaton, et al.

(Received without objection and marked Ex. B.

Copy of Exhibit B. page 32.)

296

PLAINTIFF RESTS.

MR. AYERS:

It is admitted that all of the rights, if any, acquired by any person under the issue of the Sioux half-breed scrip location referred to in the answers, came to and vested in the persons referred to in the answer of Frank W. Eaton in this 297
case in the proportions therein set forth by conveyances direct or mesne. It being the intention of this stipulation merely to avoid the necessity of introducing in evidence the records of the deeds evidencing such conveyances, and to have no other or further effect than if the deeds evidencing any of the conveyances or attempted conveyances, or purported conveyances from the scripee, or any one purporting to act for her, had been offered

in evidence. It not being intended to concede that any rights passed by virtue of such scripee location.

It is further admitted that the conveyances or instruments purporting to be such, hereinbefore in this stipulation referred to, were all duly re-
298 corded in the office of the Register of Deeds of the proper county prior to the issuance of the Register and Receiver's receipt for the lands in controversy to Frank Hicks.

MR. AYERS:

The defendants having declined to take advantage of the proposed stipulation it is hereby withdrawn.

MR. HARRIS:

299 The defendants and all of them offer in evidence A. 3 of Deeds, page 349, being the Receiver's receipt for scrip location 19 D. Lots 1 and 2 and the southwest of the northeast quarter and the northwest quarter of the southeast quarter of section thirty, township sixty-three, range eleven.

MR. AYERS:

Objected to as irrevelant and immaterial.

MR. WASHBURN:

300 In connection with that offer we offer Book D. of Deeds, page 204, from the records of the Register of Deeds of Lake County.

MR. AYERS:

Objected to as irrevelant and immaterial.

THE COURT:

The purpose of this is because you desire to show settlement?

MR. HARRIS:

While we do not deem it necessary, yet as matter of precaution we propose to show possession of these premises happens to be on another portion of this section than the particular premises that are in dispute. But we claim, under the decisions of this court, where a party claims to be 301
in possession, where his possession is notice, that the limit of his possession are defined by the boundaries of his deeds under which he claims. And that is the purpose for which we are introducing it.

MR. AYERS:

As I called your Honor's attention, the question of possession of the premises is not in issue.

MR. HARRIS: 302

Here is a point we are anticipating: Are you claiming at all to be an innocent purchaser—

MR. AYERS:

Oh, no. We knew what the condition of the record was. We knew all about your claims and that may be admitted on the record.

MR. HARRIS:

The only reason,—We set out in our answer that we had been in possession of the premises all 303
this time and our deeds are on record and you have denied that in your reply.

MR. AYERS:

We offer to stipulate these deeds were on record, and we should go further, that we had full knowledge, either actual or constructive, of all those records pertaining to this land being in the Land Office and in the Register's office.

MR. HARRIS:

The question of title is determined upon matter of law whether the Secretary of the Interior ruled rightly or wrongly?

MR. AYERS:

Yes sir. We don't make any question of good
304 faith or bad faith.

MR. HARRIS:

That being a fact that offer is withdrawn, in regard to lots 1 and 2. We offer in evidence A. 3 of Deeds, page 350, being Receiver's receipt for scrip location No. 19 E. and covering lots 3, 5 and 6, and the southeast of the northwest quarter of section thirty, township sixty-three, range eleven west. Filed for record July 21st, 1885.

305 (Received without objection. Copy page 84.)

MR. WASHBURN:

We also offer in evidence the record of the same instrument, Receiver's receipt for the same premises, dated July 21st, 1885, from Book D. of Deeds, page 204, of the records of Lake County: Recorded December 5th, 1885.

(Received without objection.)

MR. HARRIS:

306 We offer in evidence "A" Powers of Attorney, page 613, being power of attorney from Orillie Stram and Roman Stram to Leonidas Merritt, empowering him to locate Sioux half-breed scrip 19 D. Recorded June 22nd, 1883.

MR. AYERS:

That is objected to—

(Offer withdrawn.)

Paper marked Ex. 1.

It is admitted that the powers of attorney, certified copies of which are annexed to exhibit 1 were recorded in St. Louis County on June 22nd, 1883, in A., Powers of Attorney, on pages 613 and 614, the same being recorded prior to July 6th in Lake County.

MR. HARRIS: 307

I offer in evidence warranty deed in A. 3 of Deeds on page 350, given by Orillie Stram and Roman Stram by their attorney in fact, Leonidas Merritt, to Frank W. Eaton, an undivided seven-ninths interest in lots 1, 2, 3, 5 and 6 and the southwest quarter of the northeast quarter, the southeast quarter of the northwest quarter, and the northwest quarter of the southeast quarter, in section thirty, township sixty-three, range eleven west. Filed for record November 23rd, 1885, at 308
2 P. M.

MR. AYERS:

The general objection that it is irrevelant and immaterial. And to all of these deeds, of course, the objection, it will be understood— It is understood that all of these deeds are introduced in evidence subject to the objection that they are irrevelant and immaterial.

MR. WASHBURN: 309

Also in that connection we offer in evidence the record of the same deed from the records of Lake County, Book D. of Deeds, page 205, being recorded in that county on the 5th day of December, 1885. Conveying a seven-ninths interest to Frank W. Eaton.

It is admitted that the deed which is a part of defendant's Exhibit 1 dated the 31st day of March, 1886, and made by Orillie Stram,, formerly

Orillie Moreau, and Roman Stram her husband, to Frank W. *Eaton and covering* all of the property that was located by both pieces of scrip, 19 D. and 19 E., was recorded in Book 8 of Deeds of St. Louis County, on the 3rd day of April, 1886, at ten A. M., and also on the 24th day of April, 1886, in the office of the Register of Deeds of
310 Lake County, in Book D. of Deeds, page 264.

MR. AYERS:

It is admitted that such rights, if any, as were acquired by virtue of the scrip location referred to in the answers in this case, and by virtue of the adjustment of such locations, passed by conveyances mesne or direct, to the various persons and in the proportions set forth in the answer of Frank W. Eaton filed in this court. It being the intention of this stipulation merely to avoid the necessity of introducing the deeds or documents showing the transfers of such asserted rights or claims, and to have no further effect than if such documents or conveyances had themselves been introduced in evidence.

311

MR. HARRIS:

We now offer in evidence Exhibit 1.

Received without objection. Copy page 88.

312

Paper marked Ex. 2.

MR. HARRIS:

I now offer in evidence Exhibit 2.

(Received without objection. Copy page 124.)

MR. HARRIS:

We would like a formal admission as to that question that was,—it is denied in the answer, as to your knowledge of our rights in the premises?

MR. AYERS:

It is admitted that the plaintiff and those under whom he claims full notice or knowledge, either actual or constructive, of the various deeds or other instruments which have been referred to in this case or introduced in evidence as having been recorded in either St. Louis or Lake County 313
prior to the time that it acquired its interest in the land in question.

At this time a recess is taken until 2 p. m.

---

2 p. m.

Case called.

MR. HARRIS:

I will state the object of the testimony we 314
wish to offer. We withdrew certain testimony this morning upon a statement of what counsel would admit, but when he came to make the admission it was not so broad as we had thought the admission was when he made it.

MR. AYERS:

We admit we had full notice of all their claims and rights or asserted rights.

MR. HARRIS: 315

I think your admission is confined simply to notice of the instruments of record. That only admits what has been proved, anyhow. That stipulation as it stands on the record does not admit notice of all of our rights and claims to the land after the decision of the Secretary. Now what we desire to do is this: These deeds we have introduced were all recorded prior to the decision of the Secretary of the Interior. I believe that as

matter of law those deeds are notice of all of the rights that we now possess, but the question might possibly be raised in the court above—

MR. AYERS:

Suppose I admitted we had notice of all of your asserted rights and claims in the same man-
316 ner as if it had been in the actual possession of the land and all of it?

MR. HARRIS:

Yes, with that—

It is admitted by plaintiff that it and its grantors(had notice prior to the time of the conveyance to it of the lands in question of all of the asserted or alleged claims and rights of the defendants, or either of them, to the lands in contro-
317 versy in the same manner as if the lands in controversy and each part thereof had been in the actual possession of the defendants.

Defendants rest.

Plaintiff rests.

Case closed.

318

EXHIBIT A.

(Exhibit A being a copy of Exhibit A annexed to the Findings, is not printed in the paper book.)

COPY OF EXHIBIT B.

"H" H. W. S.

M. C. S. (Ten cent revenue

Doc. 1, Case 681. stamp.)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, 319

Washington, D. C.,
April 19, 1899.

I, Binger Herman, Commissioner of the General Land Office do hereby certify that the annexed copies of the testimony of F. W. Eaton and Edward Byrne, and of Exhibits "F," "G," "C" and "H," mentioned in said testimony in the case of Thomas W. Hyde et al. v. F. W. Eaton et al., Duluth Land District, Minnesota, are true and 320
literal exemplifications of the originals now in this office, showing erasures and interlineations as appear in the originals, except that in Exhibit "F," in lines 1, 6, 25 and 31 of the original certificate of location (being lines 1, 6, 23 and 29 of the copy) and in lines 1, 5, 25 and 31 of the original certificate of adjusted location (being lines 1, 5, 22 and 28 of the copy) and in the briefing, where the letter "D" is written, there appear traces of knife erasures in the originals; also in Exhibit 321
"G," in lines 1 and 26 of the original certificate of location (being lines 1 and 24 of the copy), and in lines 1 and 22, of the original certificate of adjusted location (being lines 1 and 20 of the copy) and in the briefing, where the letter "E" is written, there appear traces of knife erasures in the originals.

In testimony whereof I have hereunto subscribed my name and caused the seal of this of-

fice to be affixed, at the City of Washington, on the day and year above written.

BINGER HERMAN,
Commissioner of the General Land Office.

(United States General
Land Office.)

322

(The following is a literal copy, including erasures, interlineations, exactly as they appear on the exhibit.

G. P. S., Reporter.

TESTIMONY ON PART OF DEFENSE.

323 Frank W. Eaton duly sworn says:

I am one of the parties defendant in this case —I know the description and location of the land in contest.

I had something to do with the improvements on said land. I was the duly appointed attorney in fact for Orillie Moreau-Stram—and authorized the making of the improvements for the purpose of locating the scrip in question, under the rules of the Land Department.

324 "Witness here shown the files in S. H. B. Scrip 19 D. and identified the scrip certificate and power to locate as the authority under which he proceeded in having the improvements made upon the land preparatory to locating the same. Also identified his own affidavit of the fact of the improvements having been made. Files offered in evidence and marked Exhibit "F" and filed.

Witness then shown the files in Scrip No. 19 E. and made a like identification. Files offered in evidence marked Exhibit "G" and filed.

In having these improvements made upon the land in question I had no other purpose in view but the location of the scrip by virtue of the power of attorney. 325

I made the improvements in good faith solely in pursuance of the powers of attorney for the purpose of securing the location of the scrip in proper form and manner.

At the time I caused the improvements to be made the land was unsurveyed and I had no knowledge of it except that it was vacant unoccupied and unclaimed land by any other person. 326

I employed Edward Byrne to go and make the improvements upon the land in the first and I subsequently employed Richard Fagan also to go up there.

I agreed with Edward Byrne that in consideration of the land proving valuable as he represented to me and in consideration of his erecting or causing to be erected or made for me valuable improvements on two locations of 160 acres each, that I would pay his expenses necessarily incurred in doing the work, that I would locate the scrip upon the land and as soon thereafter as the location was completed I would cause to be conveyed to him an undivided one-third interest in the land. 327

To the best of my knowledge Mr. Byrne fulfilled his part of the agreement. I also fulfilled mine.

At the time I made the contract with Byrne I knew nothing about James Power or Joseph Clement. I don't think Thomas Ross did anything. I am informed that he went up on the land but do not know what he did.

I was present when Byrne, Power and Cle-
328 ment returned from the land and saw them at the office of Chas. R. Haines (Mendenhall & Haines.)

Witness here shown Exhibit "C" and identified it.

I was present when that affidavit was made. It was read over to Mr. Power. The subject matter of it was talked over with him and the whole affidavit was dictated by me in Mr. Power's presence. It was made after the deed was executed,
329 conveying Byrne, Power and Clement 1-3 interest in the land.

The circumstances under which the affidavit was made and dictated are as follows: I did not know at that time how much proof was necessary to establish the fact that I had caused improvements to be made on the land, and I thought it necessary that Byrne, Power and Clement should furnish additional proof and for that reason I had this affidavit executed by them to furnish
330 the Department in case more evidence was required.

At the time this affidavit was made Mr. Power was sober and fully understood the contents of it. It was read over to him and explained to him thoroughly.

I have papers from Mrs. Stram confirming all my acts as her attorney and also the acts of Leonidas Merritt.

Witness here produced the papers alluded to.

Offered in evidence by defendant.

Marked Exhibit H and filed.

Edward Byrne was the explorer who first discovered the land, and he came to me and told me of them.

331

CROSS EXAMINATION.

I was never on those lands.

I first saw Orillie Stram March 31st, 1886. I first saw the scrip papers in Duluth, Minn., sometime in the last of May or first of June, 1883, soon after the powers were executed. They were sent here to me and I never had seen them before. I think they were sent by mail. I got them from Byron M. Smith, Minneapolis, Minn.

332

Q. Then you located these pieces of scrip for the purpose through them of obtaining title to the land they should cover yourself? A. My intention was to have an interest in it. I did not expect to have the whole.

Q. Who also did you expect to have an interest? A. Mr. Merritt, Mr. Fagan and Mr. Byrne that is all.

Q. You did not expect Mrs. Stram to have any interest in it then? A. No I did not expect her to have any interest in the land, although she might.

333

Q. You considered them did you not, that by purchasing the scrip you would obtain all the title to the lands to be located under it, and that the scripee named in the scrip would have no interest in the lands and you made the arrangements for the improvements under that supposi-

tion, did you not? A. Objected to together with all this evidence relative to title for the reason that the scrip patent is issued to the scripee. That Frank W. Eaton was only empowered to locate the same and that by the location of the scrip the title became vested in the scripee and it is wholly
334 immaterial what Mr. Eaton may have expected with regard to purchase of the lands as that was a subsequent consideration and no title could pass in any event without the execution of a deed by Orillie Stram or her duly authorized attorney in fact. Defendant also moves to strike out all the testimony as to what Eaton's intentions were as to what interest he and others expected to get in the property.

Question by the Register:

335 Q. Did you not know at this time that Mr. Merritt was empowered by letters of attorney to sell and convert the land and were you not acting with him jointly in the premises.

A. Yes. Mr. Merritt was a business partner of mine at the time.

Answer to question previous to last.

I made the improvements under the supposition that when she conveyed to me her scrip and
336 a power of attorney to locate the same for a valuable consideration and the farther contract on her part for a valuable consideration to fully confirm all my acts and also the acts of Leonidas Merritt her attorney in fact for the purpose of conveying the lands located under and by virtue of said half-breed scrip that all her rights as to any land as far as she was concerned was thereby transferred.

Q. Transferred to whom? A. To whoever her attorney in fact might desire.

Q. You had all these papers that you mentioned in next to your last answer, and Eaton & Merritt had paid the full consideration therefor, before the 16th day of June, 1883? A. No sir.

Q. What of those papers did you not have? 337
A. We had the power to locate and convey prior to that time, but had not fully paid for them.

Q. Who did you pay? A. I made the first payment to Byron M. Smith, and paid the balance to Orillie Stram March 31, 1886. I made no payment to her until then. I had agreed to pay her previous to that time. I made the agreement at the time the powers were obtained by Byron M. Smith.

338

Q. Did you know at the time this land was conveyed by Merritt (Mrs. Stram's attorney) that Smith had made any such arrangement on her behalf?

A. I have already answered the question in answer to the last question before this.

Q. Did you make that arrangement yourself with Mrs. Stram at the time the powers of attorney were given or did somebody else act for you in making that arrangement?

339

(Objected to as immaterial.)

A. Byron M. Smith was acting for me supposing that he had full authority. He acted for me and for her. He held her scrip and got new powers of attorney and made the arrangements. I knew of this arrangement at the time we procured the scrip.

Q. That is then, your arrangement was with Smith that you should pay him a certain sum which you did pay for the scrip and a certain other sum which you paid finally March 31, 1886, to Orillie Stram?

(Objected to as incompetent.)

340 A. Yes.

Q. When was you to pay that sum to Mrs. Stram under the original arrangement? A. After the location was perfected and the scrip adjusted.

Q. Were the names filled in those powers of attorney when you received them or did you fill them in after you received them?

(Objected to as immaterial.)

341 A. They were filled in after I received them.

Q. Was the amount to be paid to Mrs. Stram under your arrangement with Smith dependent in any manner upon the value of the land obtained or was it a fixed amount?

(Objected to as immaterial.)

A. There was a fixed amount between Mr. Smith and myself.

Q. Was Mrs. Stram ever on the land or not—to your knowledge?

342 (Objected to as incompetent.)

A. I don't know anything about it.

Q. Mr. Eaton, will you explain why you made oath in this affidavit that has been offered here that you had as attorney built upon each of said pieces of land a dwelling house 14x16 feet 1 story high built of timber and covered with split shingles with door and windows and had cleared ready for cultivation 1-2 acre of said land and that

said improvements were made under the personal direction of said Orillie Stram and for her personal use and benefit when according to your own testimony you never had seen Orillie Stram and never had been on those lands? A. Because it was true to the best of my information.

Q. You did not make these affidavits on in- 343
formation and belief did you? A. Only that portion relative to the improvements on information and belief, as to the other I was acting as the authorized attorney of Stram under a power of attorney and my acts were her acts, and you can not separate the attorney and principal. And the improvements were made by Mr. Byrne and Mr. Fagan directly in my employ and the improvements were such as Mr. Fagan reported to me which statement of his I then (corrected on 344
reading.) believe to be true. I had only such knowledge in relation to improvements as I have stated.

The men came down from the woods the same day as the deeds to Byrne, Clement and Power were executed.

Q. That is July 2, 1883, if the date in the deed is correct? A. Yes.

Q. How long would it take parties to come 345
down? A. From 3 days to two weeks according to weather and other circumstances. I don't know how long it took them.

Q. Had Fagan been to those lands for you more than once before they all came down? A. That was his second trip when they all came down.

Q. Did you have this scrip when you first made arrangements with Byrne to scrip these

lands? A. I did not have the scrip at that time.

Q. At what time did you make the arrangement with Byrne? A. Sometime the last of May, 1883, we first talked about it. I made a definite arrangement as far as he was concerned at that
346 time. He went up to the lands the next day I think.

Q. Both the powers, to you and Merritt were received by you in blank were they? A. They were.

RE-DIRECT.

Q. Was Power sworn to the affidavit, Exhibit "C," in your presence? A. Yes, he was
347 DULY SWORN.

The power to locate was filled out by Luther Mendenhall, and in the power to convey Mr. Merritt's name was filled in by Byron M. Smith a few days after I received it.

CROSS EXAMINED.

Power was sworn with his hand uplifted sim-
348 ultaneously with Byrne and Clement. I know this by seeing him and the act. Power was in the office all the time during the time the affidavit was being prepared.

Question by Register:

Q. How long a time were you all in Mendenhall & Haines office that day? A. I should say about two hours.

FRANK W. EATON.

Subscribed and sworn to before me
this 14th day of April, 1886.

R. N. MARBLE,
Register.

349

April 15th, 1886.

Edward Byrne being duly sworn, says I am 40 years of age and reside in Duluth, Minn. Have lived here about six and one-half years.

I am an explorer. I know the property that is in controversy in this case. I discovered the property myself.

I know Frank W. Eaton of Duluth, Minn. 350
Have known him about 6 years. I made improvements upon the land in dispute.

I built one house 14x16 feet with a floor and roof, door and window, bunk and table, and another house similar in size to the first house nearly the same as the first except that it had no window although a space was cut out for one. I also cleared 1-2 an acre of land.

I heard the testimony of Hyde and McDonald. 351
They were mistaken as to there being but half a roof on the shanty, at least as they stood when I left them after building them. There might, however, have been a half roof when they went there a year or so after they were built. The house as I left it WAS inhabitable, considering the time of the year there was no stove in it and none was required, that is there was no fire place or chimney as none was required at that time a year.

Heating in that part of the country is done with fire places.

There WAS a door hung in the door way of the shanty with leather straps when I left. Doors and windows of shanties are commonly stolen in that country by settlers to use on their own shan-
352 ties when they find owners of property absent.

I made those improvements under the direction and instruction of Frank W. Eaton.

I made no improvements there in my own behalf. I did not nor did any one with me make any improvements for the purpose of claiming the land ourselves under the homestead or pre-emption law.

Q. Power says that you and he put homestead notices on the buildings. If you did
353 so you may explain why it was done and what was the object. A. We went up to hold this land and make good improvements according to Mr. Eaton's directions, and had to put notices at different places on the land in order to prevent other explorers from squatting or making improvements on the land. Mr. Power understood this and why it was done just as well as I did. Mr. Power was in my employ at the time.

I remember of writing on the shanty "im-
354 provements" but do not remember of writing "homestead" because we never intended to take a homestead.

Witness here shown the stake which was introduced in evidence by the plaintiff and testifies that he does not recognize any of his own writing thereon. I don't know whether that stake came from the land or not. I do not recognize the writing on the stake as my own. I had the ar-

rangement with Mr. Eaton before the improvements were made. The arrangement was made in Eaton's office in Duluth before we went up to the land.

The understanding was that I should receive a 1-3 interest in the land, $50 in cash, all provisions and tools necessary to make and complete 355
the improvements. Mr. Eaton furnished the money as agreed, also tools and provisions.

After making the arrangements with Eaton I made one with James H. Powers.

I intended to employ Warren Miller of Ontonogon, Mich., and make the contract with him but he could not be got at the time and so I took Jas. H. Powers.

I made the arrangements in Welsh's saloon 356
with Power before we left Duluth to go to the land. I told him I was promised a 1-3 interest in these lands from Eaton for going to make the improvements, and to get that 1-3 interest we would have to go on the land, stay some time and make improvements and when everything was settled I would divide the third with him and Clements, who was my partner, when we made the discovery that the land was valuable.

He agreed to the arrangement and went with 357
me and assisted in making the improvements under that agreement. I furnished him $20 to buy his outfit with to go there.

Before starting I took him to Eaton and Merritt's office and introduced him to Leonidas Merritt. We inquired for Mr. Eaton but could not find him. I was present when Power talked to Mr. Merritt, Mr. Eaton's partner.

Q. Did he not state to Mr. Merritt in your presence that he understood from you that you were to receive 1-3 interest in the land and that you had agreed to divide that 1-3 with him and Clement?

Objected to as leading and suggesting the
358 answer to the witness.

A. He did.

Mr. Richard Fagan came upon the land while Power, Clement and I were making the improvements. He came there twice. The first time he came he stated what he came for. He said he came to get the description of the land and assist in making improvements. He stated that Mr. F. W. Eaton sent him and he brought a letter from Eaton at the same time. The letter was
359 addressed to me, Edward Byrne. Mr. Fagan worked about two days.

It would take one man two days to cut the logs alone for each shanty to build the shanty with, and one man could by no means handle the logs in erecting the shanties. The shanties were from 7 to 9 feet high. When Mr. Fagan came the second time Mr. Merritt came with him and I had no conversation with Fagan.

360 We all left the land and came down to Duluth together, there were Mr. Merritt, Mr. Fagan, Power, Clement and an Indian or two and myself. The Indians were packers.

The improvements were all complete when we left there. I did not take Power out one side just before leaving the land and tell him what he was to get, and that was not the first time he knew what he was to get. He finally understood

the whole matter before we left Duluth in the first place. The first place we went to after returning to Duluth was Friedenburg's restaurant (called the parlor saloon) and got our dinner. We then proceeded directly to the office of Mendenhall & Haines. Power, Clement, Merritt, Eaton, Fagan and myself went there together, and we all got our matters fixed up and the papers made out before we left there. I don't know whether Power was there all the time or not. 361

Mr. Power was sober during all the time we was there engaged in making out the papers.

Witness here shown Exhibit "C" and said that he recollected Mr. Haines reading an affidavit containing statements like the one contained in this. I signed this Exhibit "C" and identify my signature. The paper I refer to as having been read over by Mr. Haines, was made out by him and dictated by Mr. Eaton and was sworn to by Jas. H. Power, Edward Byrne (myself) and Jos. Clement. 362

Q. Examine Exhibit "C" and state whether the contents of it are true or not? A. They are true.

I believe Mr. Power fully understood the import of Exhibit "C" before he signed it. 363

I and the other parties all received our pay from Mr. Eaton according to the agreement made before going up there to make improvements.

CROSS EXAMINED.

Mr. Eaton was never on those lands to my knowledge.

Mr. Eaton directed us to go and make good substantial improvements, in the same style as are made by pre-emptors and homesteaders in this country. He did not state specifically how much to clear, but gave a general direction. I don't know whether Orillie Stram was on the land or
364 not. I never saw any half-breed woman there. I did not know or had not heard of any such woman at that time. The first time I ever heard Mrs. Stram's name mentioned was in Haines' office when we made the affidavit.

When I made the arrangements with Mr. Eaton I understood that he had the scrip under his control. Either had it in his possession or had made arrangements for it.

I had discovered the land about three weeks
365 before going up to make improvements. Clement was with me when I found it. I was then at work for the Minnesota Iron Company. Clement and I were what were called mineral explorers at that time, and had been in the employ of the company eighteen months at that time.

RE-DIRECT.

I run the biggest part of all the lines about
366 this land. I run the line through the center of the section east and west. I run a true line east from the 1-4 post on the west side of section 30, run it east 1-2 mile. I did it in order to locate the land and find out where to place the improvements. This was before the survey of the interior of the township.

I used a "Gurley's dial compass." I tested the accuracy of this line by re-tracing the range line for a half mile between sections 11 and 12. I found

the compass correct, and that my line was correct east and west, and a right angle line with the range line. The improvements were made north of this east and west line that I ran. They were two hundred paces north of the line.

I know something about McPherson who made a subsequent survey. I do not consider him 367
a competent surveyor, or any surveyor at all. I have worked under him on surveys.

Q. What do you know about his making surveys which were inaccurate before.

Objected to as irrevelant and immaterial.

A. I don't recollect any.

I consider the survey I made accurate and made the improvement acting under that survey in good faith and believe they are on the land. 368

RE-CROSS.

The land in question shows signs of iron, and was the reason that I considered it valuable.

I will not say positively that I did not write "Homestead" on my shanty or on the stakes.

Q. Do you say that you did not write that on this stake in evidence? A. I can not swear to 369
anything about that stake.

Q. Now I want an answer distinct to this question "Do you swear that you did not write this writing that appears on the stake heretofore introduced in evidence?" A. No.

Q. Give me your opinion whether it is your hand writing or not? A. I believe it is my hand writing.

Q. Particularly examine the word "Homestead" and say if that is your writing? A. I can't say, but I think it is all my writing.

Q. Why was it not just as easy for you to write the name of the scripee for whom that land was being taken upon those improvements and stakes
370 as to write your own name and Power.

Questions by Register.

Q. For what purpose did you put those stakes there with your names? A. To keep other explorers and claimants off under our orders from Eaton and mislead and keep others off the land.

Preceding question objected to as frivolous.

Objection sustained on the ground that witness has already testified that at that time he had
371 no knowledge of the name of the scripee and that words written were written for the purpose of misleading others who might wish to squat on the land.

Plaintiff's attorney excepts to the ruling on the ground that it is arbitrary and not within the power of the Register and Receiver under the rules promulgated by the General Land Office for their government.

372 Q. You understood at the time you were making these marks that you were making this improvements under Sioux half-breed scrip did you? A. Yes.

Q. Who did you understand owned this scrip? A. Frank W. Eaton.

Q. Why did you not mark the stakes and improvements on the lands with Frank W. Eaton's name.

Same objection and same ruling as in the foregoing question. Same exception to plaintiff's attorney.

Q. You thought then did you that it would better serve your purpose to mark those improvements falsely than truly?

Same objection, ruling and exception. 373

Answer to question by Register.

I was aware that the lands were valuable four years before the improvements were made but had not made a careful examination of them until about three weeks before making the arrangements with Mr. Eaton.

Q. Did you mark these lands as you did to mislead any person who might have an interest in the land by settlement or otherwise or did you as being the first party who made improvements 374 thereon mark them to mislead and keep others off and thus protect the interests of Mr. Eaton who employed you? A. I marked them to protect Mr. Eaton's interests and keep others off as I was the first party to make improvements and I thereafter walked about the lines for days with a revolver to protect Eaton's interests and keep others off.

Q. Was Lonstorf there while you were there? A. Yes. Mr. Hartman was there also. The latter was there 10 or 12 days before Fagan & Merritt 375 came. It was before Fagan came the first time. I had no talk with Hartman that I recollect of about selling to him, although I will not say that I did not have any such talk. I heard Mr. Hartman's testimony.

Q. Did you not tell him as he said that if parties were not there that day whom you expected you would treat with him for sale, or words to that

effect? A. I had nothing to sell. I don't remember telling him so. I don't remember whether I told him so or not.

A. I will not say whether I did or did not tell him so.

A. I can't say how many days I was there
376 before Fagan came the first time but I think about 15 days.

A. About the same length of time afterwards we came down.

A. We were about 6 days coming down.

A. We left here to go up there about the middle of May, 1883.

A. We were about 6 days going up.

377 A. We were on the land not quite a month I think.

A. The improvements were not completed when Fagan left there the first time.

A. My shanty was completed but Powers' was not.

A. Powers' was completed afterwards.

A. The door was hung on the inside and it fit as near as they generally fit in the woods.

378 A. There was a jam in the door way.

A. The roof part that was covered with shakes was a portion on each end, say a foot or 18 inches.

A. The shanties were chinked but not mossed.

A. I do not know whether Power drank any after he came in town that day at the Friedenburg's restaurant (Parlor Saloon) or not.

A. I don't know whether he and Clement went across the street from Mendenhall & Haines office and got some drinks or not.

A. We were all three sworn to the affidavit in the same way at the same time and by the same officer.

Q. How was that done? A. As near as I 379
can recollect the affidavit was read over by Mr. Haines who asked if we understood it we held up our right hands, swore to it and signed our names then he went to the desk and put his stamp on it.

A. I saw Power hold up his right hand.

A. By window I mean a hole cut in between the logs we had no glass window.

A. The contents of the letter from 380
Eaton which I spoke of were to the effect that he had been disappointed in getting the description of the claims from the man he had sent up there before, and sent Mr. Fagan up to get another description and assist us with the work. That was the substance of it.

Q. What was your idea in getting Power to go with you to improve this land if you already had Clement as a partner. Why did you and 381
Clement not do it without taking a third man? A. Because Clement had a preemption filing in 62 R. 16 at that time, and was well acquainted in the country.

Q. How did that make any difference with his assisting you along without Power's help in making these improvements on the land that you were improving so that Eaton might get them with Sioux scrip? A. Because the parties, the

parties that I was suspicious of would take advantage of the knowledge they had of Clement having a preemption and go on the land in opposition to him sooner than they would against a man who had no filing.

Q. Did not Power have a pre-emption claim too? A. I was not aware that he had at the time I employed him in Duluth.

382

Q. Do you pretend to say that the fact that a man had taken a pre-emption claim would thereafter prevent him taking a homestead and that was the reason why Clement could not go on this land and make improvements with you?

(Objected to for the reason that witness has not testified to anything of the kind included in the question but has explained his very reasons.)

383 A. I cannot answer the question.

RE-DIRECT.

When Fagan left for Duluth the first time the improvements were all completed except hanging the door and cutting a window. After he came there he assisted in completing them up to that point.

A. Speaking of Hartman and what I told

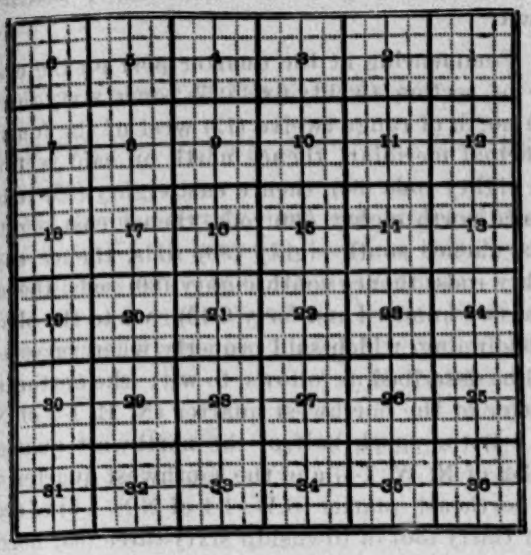
384 him I will say that many people came there making propositions to me and I had to tell them anything I could devise to get rid of them and get them to leave me alone.

EDWARD BYRNE.

Subscribed and sworn to before me
this 15th day of April, 1886.

R. N. MARBLE,
Register.

Township 63, Range No. 11 W., 4th P. Mer.



385

386

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

U. S. Land Office,
Duluth, Minn.

387

In the matter of the application of Orillie Stram, formerly Orillie Moreau to locate Sioux half-breed scrip No. 19 Letter D., for one hundred sixty acres of land.

Frank W. Eaton being duly sworn on his oath says that he is the attorney in fact of said Orillie Stram and is duly authorized by her to locate the scrip above described, and that he has so located the same as such attorney in fact on

the following described unsurveyed real estate within the limits of the Duluth Land District, to-wit:

Commencing at the quarter post on the east line of section twenty-five (25) town sixty-three (63) north of range twelve (12) west of the fourth
388 principal meridian, thence north on said section line eighty rods (80), thence east eighty (80) rods, thence north eighty (80) rods, thence east eighty rods, thence south eighty (80) rods, thence east eighty rods, thence south eighty (80) rods, thence west two hundred and forty (240) rods to the place of beginning, which said property when surveyed will be described as follows, to-wit: the northeast quarter of the northwest quarter (N. E. 1-4 of N. W. 1-4) the south half of the northwest quarter
389 (S. 1-2 of N. W. 1-4) and the southwest quarter of the northeast quarter (S.W. 1-4 of N.E. 1-4) of section thirty (30) in township sixty-three (63) north of range eleven (11) west of the fourth principal meridian. That he has as such attorney built upon said land a dwelling house fourteen by sixteen feet, one story high, built of timber and covered with split shingles with door and windows, and has cleared ready for cultivation one-half acre of said land.

390 That said improvements were made under the personal direction of said Orillie Stram and for her personal use and benefit and under and by authority of said power of attorney hereto attached.

FRANK W. EATON.

Sworn and subscribed before me this
16th day of June, A. D. 1883.

J. R. CAREY,
Register.

Scrip Certificate No. 19 D., Register and Receiver's No..... Sionx half-breed reserve at Lake Pepin.

ACT OF JULY 17, 1854.

LAND OFFICE, Duluth, Minnesota, June 16th, 1883. 391

We hereby certify, that the attached half-breed scrip No. 19 Letter D.—was on this day received at this office from Orillie Stram by .... of Crawford County, State of Wisconsin by F. W. Eaton, her attorney in fact.

J. R. CASEY,
Register.

W. W. SPALDING,
Receiver. 392

I, Orillie Stram, formerly Orillie Moreau of Crawford County, State of Wisconsin, hereby apply to locate and do locate, the following unsurveyed tract of land, designated as follows, to-wit: Commencing at the quarter post at the east line of section twenty-five (25) town sixty-three (63) north of range twelve (12) west of the fourth principal meridian, thence north on said section line eighty rods, thence east eighty rods, thence north eighty rods, thence east eighty rods, thence south eighty rods, thence east eighty rods, thence south eighty rods, thence west two hundred and forty rods to the place of beginning, containing one hundred sixty— acres, in the District of Lands, subject to sale at the Land Office at Duluth, Minn., in satis- 393

faction of the attached scrip No. 19 Letter D., issued under the Act of Congress, July 17th, 1854.

Witness my hand and seal this 16th day of June, 1883.

ORILLIE STRAM, by (Seal)
Attest: F. W. EATON,
394 Her Attorney in Fact.

LAND OFFICE, Duluth, Minn.,
June 16, 1883.

We hereby certify, that the annexed Scrip No. 19 Letter D., has this day been located on the unsurveyed tract of land, as described within,
395 containing one hundred sixty (160) acres, agreeably to the Act of Congress of July 17, 1854, and by the party duly authorized to make such location.

J. R. CASEY,
Register.
W. W. SPALDING,
Receiver.

396

(Indorsed on back.)

LAND OFFICE, Duluth, Minn.,
June 16, 1883.

Richard Fagan, being duly sworn, says: I am acquainted with the unsurveyed tract of land described within, by personal examination of the same on the tenth 10th day of June, 1883, and that there was no person living on the same at that

time, nor were there any improvements on it, except those of Orilie Stram.....nor any person claiming said tract.

RICHARD FAGAN.

Sworn and subscribed before me this 16th day of June, 1883.

J. R. CASEY, 397
Register.

Scrip certificate No. 19 D., Register and Receiver's No. 188.

SIOUX HALF-BREED RESERVE AT LAKE PEPIN.

ACT OF JULY 17, 1854.

LAND OFFICE, July 21st, 1885. 398

We hereby certify, that the attached half-breed scrip, No. 19 D., Letter D., was on this day adjusted by Orilie Stram formerly Orilie Moreau, of St. Louis County, State of Minnesota.

G. G. HARTLEY,
Register.

E. G. SWANSTROM,
Receiver.

399

I, Orilie Stram, formerly Orilie Moreau of Crawford County, State of Wisconsin, hereby apply to locate and do locate the tract of land, designated as follows, to-wit: Lots number three (3), five (5) and six (6) and southeast quarter of northwest quarter of section thirty (30) in township number sixty-

three (63) north of range eleven (11) west of 4th principal meridian (the above location is hereby made to adjust to the U. S. survey, the location made June 16th, 1883, upon unsurveyed lands of half-breed scrip No. 19 Letter D., issued under the Act of Congress July 17th, 1854, containing
400 one hundred sixty-one and 67-100 acres in the District of Land subject to sale at the Land Office at Duluth, Minn., in satisfaction of the attached scrip No. 19 Letter D., issued under the Act of Congress, July 17th, 1854.

Witness my hand and seal this 21st day of July, 1885.

ORILIE STRAM, (Seal.)
By F. W. EATON,
Her Attorney in Fact.

401 Attest:
N. B. THAYER.

LAND OFFICE,
July 21st, Duluth, 1885.

We hereby certify that the annexed scrip No. 19 Letter D., has been this day adjusted on the
402 tract of land, as described within, containing 161 61-100 acres, agreeably to the Act of Congress of July 17, 1854, and by the party duly authorized to make such location.

G. G. HARTLEY,
Register.
E. G. SWANSTROM,
Receiver.

Excess receipt No. 7.762 for 1.61-100 acres at $1.25 per acre $2.00.

135

(Indorsed on back.)

Land Office 187

See to James A. George, April 18, 1895.

Being duly sworn says: I am acquainted with the tract

33332

See to James A. George, April 30, 1895. 403

A. M. H.

of land described within, by personal examination of the same

See to R. & R., May 18, 1895.

on the day of 187 and that there was no per-

telegram Div. "A." H.

A. M. H.

son living on the same at that time, nor were there any im- 404

See to Geo. J. Lornstorf, May 6 and 8, 1895.

A. M. H.

provements on it except those of

See to R. & R., Aug. 2, 1895, enclosing scrip.

nor any person claiming said tract.

See to Burdette, Thompson & Low, Aug. 5, 1895.

A. M. H.

Sworn and subscribed before me this

day 187 405

See to James A. George, Aug. 5, 1895.

A. M. H.

Register.

"(" to Secretary, Sept. 17, 1895.

EXHIBIT F.

Filed April 14, 1886. R. & R. No. 187.

U. S. Land Office, Duluth, Minn., July 21st, 1885.

"C" to Hon. Edward Stringer.

306 _____

Feby. 19, 1896, as to delivery of this scrip.

Sioux half-breed scrip, Certificate 19 D. Register No. 188, located by F. W. Eaton, attorney in fact for Orilie Moreau, Sec. 30, Tp. 63, N. R. 11 W.

_____

407 Noted on scrip record. Cancelled by Dept. Decision of Feby. 18, 1889, affirming ours of Mch. 7-87. See to R. & R., Feby. 19, 1889, E. S. E. Div. H. Posted on Tract Book Sept. 9-1885.

_____

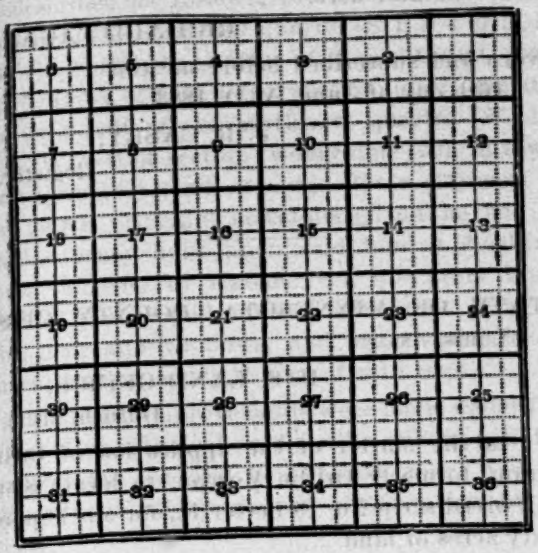
Cancellation noted June 4-89, M. P. W. See to R. & R., April 17-1895. A. M. H.

(Over.)

408 9-250. 86-99065-K.

_____

Township No. 63, Range No. 11 W., 4th P. M.



409

410

U. S. LAND OFFICE,
Duluth, Minn.

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

In the matter of the application of Orillie Stram to locate Sioux half-breed scrip No. 19 Letter E., for 160 acres of unsurveyed land. 411

Richard Fagan being first duly sworn on his oath says that he is acquainted with Frank W. Eaton and with the land described above, that he has been upon said land and knows the character of the improvements thereon, that such improvements consist of a one-story dwelling house, fourteen by sixteen feet, with door and windows, and

shingle roof, that there is cleared on said land about one half acre.

RICHARD FAGAN,

Sworn and subscribed before me this
16th day of June, A. D. 1883.

J. R. CASEY,

412 Register.

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

U. S. LAND OFFICE,
Duluth, Minn.

In the matter of the application of Orillie
413 Stram, formerly Orillie Moreau, to locate Sioux half-breed scrip No. 19 Letter E., for one hundred sixty acres of land.

Frank W. Eaton being duly sworn on his oath says, that he is the attorney in fact of said Orillie Stram, and is duly authorized to locate for her the scrip above described, and that he has so located the same upon the following described unsurveyed land in the Duluth Land District, to-wit: Starting at the quarter post on the east
414 line of section twenty-five (25) in town sixty-three (63) north of range twelve (12) west of the fourth principal meridian, thence east two hundred and forty rods (240) to the place of beginning of the land located, thence south eighty (80) rods, thence east eighty (80) rods, thence north eighty (80) rods, thence east eighty (80) rods, thence north one hundred sixty rods, thence west eighty (80) rods; thence south eighty (80) rods, thence west eighty (80) rods, thence south eighty (80) rods to the place

of beginning, which said land when surveyed will be described as follows, to-wit: The southeast quarter of the northeast quarter (S. E. 1-4 of N. E. 1-4), the northeast quarter of the southeast quarter (N. E. 1-4 of S. E. 1-4) of section thirty (30), and the west half of the northwest quarter (W. 1-2 of N. W. 1-4) of section twenty-nine (29), in town sixty-three (63) north of range eleven (11) west of the fourth principal meridian. That he has as such attorney built upon said land a dwelling house fourteen by sixteen feet, one story high, built of timber and covered with split shingles with door and windows, and has cleared ready for cultivation one-half acre of said land. 415

That said improvements were made under the personal direction of said Orillie Stram and for her personal use and benefit and under and by authority of said power of attorney hereto attached. 416

FRANK W. EATON.

Sworn and subscribed before me this
16th day of June, A. D. 1883.

J. R. CASEY,
Register.

417

U. S. LAND OFFICE,
Duluth, Minn.

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

Richard Fagan, being duly sworn on his oath, says that he is acquainted with Frank W. Eaton, the affiant in the affidavit hereto attached; that he is acquainted with the land described in said

affidavit and has been on the said land, that he has read said affidavit and knows the contents thereof and knows of his own knowledge that the improvements therein described have been made as therein described and are now on the said land, and the statements in said affidavit,
418 made in regard to said improvements are correct.

RICHARD FAGAN.

Sworn and subscribed before me this
16th day of June, A. D. 1883.

J. R. CASEY,
Register.

---

419 Scrip Certificate No. 19 E. Register and Receiver's No.

SIOUX HALF-BREED RESERVE AT LAKE PEPIN.

ACT OF JULY 17, 1854.

LAND OFFICE, Duluth, Minn.,
June 16, 1883.

420 We hereby certify, that the attached half-breed scrip No. 19 Letter E., was on this day received at this office from Orillie Stram ..... of Crawford County....., State of Wisconsin, by Frank W. Eaton, her attorney in fact.

J. R. CASEY,
Register.

W. W. SPALDING,
Receiver.

I, Orillie Stram, formerly Orillie Moreau, of Crawford County, State of Wisconsin, hereby apply to locate and do locate the unsurveyed tract of land, designated as follows, to-wit: Starting at the quarter post on the east line of section twenty-five (25) in town sixty-three (63) north of range twelve (12) west of the fourth principal meridian thence east two hundred forty rods to the place of beginning of the land located, thence south eighty (80) rods, thence east eighty rods, thence north eighty rods, thence east eighty rods, thence north one hundred sixty rods, thence west eighty rods, thence south eighty rods, thence west eighty rods, thence south eighty rods to the place of beginning, containing one hundred sixty (160) acres, in the District of Lands subject to sale at the Land Office at Duluth, Minn., in satisfaction of the attached scrip No. 19 Letter E. issued under the Act of Congress, July 17th, 1854. 421 422

Witness my hand and seal this 16th day of June, 1883.

ORILIE STRAM, by (Seal.)

Attest:

F. W. EATON,
Her Attorney in Fact.

423

U. S. LAND OFFICE,
Duluth, Minn.
June 16, 1883.

We hereby certify, that the annexed scrip No. 19 Letter D., has been this day located on the unsurveyed tract of land, as described within, containing one hundred sixty (160) acres agreeably

to the Act of Congress of July 17, 1854, and by the party duly authorized to make such location.

J. B. CASEY,
Register.

W. W. SPALDING,
Receiver.

424

Scrip Certificate No. 19 E. Register and Receiver's No. 187.

SIOUX HALF-BREED RESERVE AT LAKE PEPIN.

ACT OF JULY 17, 1854.

425 LAND OFFICE, Duluth, Minn.,
July 21st, 1885.

We hereby certify, that the attached half-breed scrip No. 19 D., Letter D., was on this day adjusted at this office by Orillie Moreau of St. Louis County, State of Minnesota.

G. G. HARTLEY,
Register.

E. G. SWANSTROM,
Receiver.

426

I, Orillie Stram, formerly Orillie Moreau, of Crawford County, State of Wisconsin hereby apply to locate and do locate, the ..... tract of land, designated as follows, to-wit: Lots number one (1) and two (2) and southwest quarter of northeast quarter and northwest quarter of

southeast quarter of section thirty (30) in township number sixty-three (63) north of range eleven (11) west of 4th principal meridian.

(The above location is hereby made to adjust to the U. S. survey, the location made June 16th, 1883, upon unsurveyed land of half-breed scrip No. 19 Letter E., issued under the Act of Congress July 17th, 1854,) containing one hundred and fifty-two acres, in the District of Lands subject to sale at the Land Office at Duluth, Minn., in satisfaction of the attached scrip No. 19 Letter E., issued under the Act of Congress, July 17th, 1854. 427

Witness my hand and seal this 21st day of July, 1885.

ORILIE STRAM, by (Seal.)
F. W. EATON, 428
Her Attorney in Fact.

Attest:
N. B. THAYER.

LAND OFFICE, Duluth, Minn.,
July 21st, 1885.

We hereby certify, that the annexed scrip No. 19 Letter E. has been this day located on the.... tract of land, as described within, containing.... 152....acres, agreeably to the Act of Congress of July 17, 1854, and by the party duly authorized to make such location. 429

G. G. HARTLEY,
Register.
E. G. SWANSTROM,
Receiver.

(Indorsed on back.)

Land Office, 187

See to James A. George, April 18, 1895.

being duly sworn, says, I am acquainted with the tract of

33332

430 See to James A. George, April 30, 1895.

A. M. H.

land described within, by personal examination of the same on

See telegram Mar. 18, 1895, to R. & R., calling for report.

A. M. H.

the day of 187 and that there was no person liv-

See to Geo. L. Lonstorf, May 6 and 18, 1895.

431

A. M. H.

ing on the same at that time, nor were there any improvements

See to R. & R. Aug. 2, 1895, enclosing scrip.

A. M. H.

on it except those of nor any person claiming said

See to Burdette, Thompson & Low, Aug. 5, 1895.

A. M. H.

tract.

432 See to James A. George, Aug 5, 1895.

A. M. H.

Sworn and subscribed before me this day of 187.

"C" to Secretary Sept. 17, 1895.

Register.

EXHIBIT G.

Filed April 14-86. R. & R. No. 188. "C" to R. & R. Dec. 30-95.

U. S. LAND OFFICE, 433

Duluth, Minn.

July 21, 1885.

"C" to Hon. E. C. Stringer as to delivery of this scrip Feby. 19-96. Sioux half-breed scrip certificate 19 E. Register's No. 187. Located by F. W. Eaton, attorney in fact for Orillie Morean, Sec. 30, Tp. 63, N. R. 11 W.

434

Noted on scrip record H.

Cancelled by Dept. Decision of Feby. 18, 1889, affirming ours of Mch 7-87. See to R. & R., Feby. 19-89 E. S. E. Div. "H" Poste Pkn tract Book Sept. 9-85.

Cancellation noted June 4-89. J. M. R. 435

See to R. & R. April 17, 1895. W. P. W.

9230. A. M. H. 86-99065. (Over.)

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

Edward Byrne, James H. Powers and Joseph Clement of said county and state, being first duly

sworn, make oath and say that they have made good and substantial improvements on the following described land, to-wit: In sections twenty-nine (29) and thirty (30) in township sixty-three (63) north of range eleven (11) west of the 4th principal meridian, located under and by virtue of Sioux half-breed scrip No. 19 E., Letter "E" for 160 acres, and by No. 19 Letter "D" Sioux scrip, issued to Orilie Stram (formerly Orilie Morian) for and under the personal direction of Frank W. Eaton, attorney in fact of said Orilie Stram and Roman Stram, her husband—and have made no improvements on said land either for themselves, or any other person, intending to claim the same under the Homestead or Pre-emption law, or for any purpose whatever, other than above described, and to our certain knowledge there is or has not been any other improvements made on above described lands, by any other person or persons.

436

437

EDWARD BYRNE,
JAMES H. POWER,
JOSEPH CLEMENT.

Sworn to and subscribed before me this second day of July, A. D., 1883.

CHAS. R. HAINES,
Notary Public, St. Louis Co., Minn.

438

(Seal.)

This indenture made this 31st day of March, in the year of our Lord one thousand eight hundred and eighty-six between Orillie Stram (before marriage Orillie Moreau) and Roman Stram, her

husband, of Crawford County and State of Wisconsin, parties of the first part, and Frank W. Eaton, of Duluth, St. Louis County, State of Minnesota, party of the second part.

Witnesseth that whereas the said Frank W. Eaton as our duly constituted and appointed attorney in fact did on the 16th day of June, A. D. 439
1883, cause to be filed in the U. S. Land Office at Duluth, Minnesota, an application for certain lands and Sioux half-breed scrip No. 19 D. and No. 19 E, each for 160 acres of land, thereby by virtue of the laws of the United States and conditions precedent which had been complied with by the said Frank W. Eaton our attorney in fact as aforesaid, vesting the title to the said land as described in said application by metes and bounds in me the said Orilie Stram (the said description 440
being by metes and bounds for the reason that the said land had not yet been surveyed by the United States,) which said land has since been surveyed by the government and plat thereof

—2—

filed in the United States Land Office, at Duluth, Minnesota, and upon said plat the aforesaid scrip and entry was adjusted 441
July 21st, A. D. 1885, thereby specifically and perfectly describing the land filed upon for me the said Orilie Stram by the said Frank W. Eaton and intended to be entered on June 16th, A.D. 1883, in the name of me, the said Orillie Stram, by our attorney in fact the said Frank W. Eaton and, Whereas, we, the said Orillie Stram and Roman Stram did on the 25th day of May, A. D. 1883, by two certain powers of attorney duly

executed acknowledged and delivered by us to Leonidas Merritt of Duluth, St. Louis County, State of Minnesota, which said powers of attorney were duly recorded in the office of the Register of Deeds for St. Louis County, Minnesota, in Book "A" of Powers of Attorney on pages 613 and 614 therein and thereby constituting and appointing
442 the said Leonidas Merritt the attorney in fact of the said Orillie Stram with full power and authority in her name and stead to grant, bargain, sell, demise, lease, convey and confirm the said lands which we then owned or which we might thereafter acquire or become seized of under and

—3—

443 by virtue of locations of Sioux half-breed scrip No. 19 E. for 160 acres of land and No. 19 D. for 160 acres of land issued to me the said Orillie Stram and,

Whereas, the said Leonidas Merritt, as our attorney in fact on the 30th day of October, A. D. 1885, did by Warranty Deed duly executed by him convey to the said Frank W. Eaton an undivided seven-ninths part and interest in the said lands which according to the said survey and plat and
444 in said deed are described as follows, to-wit: All of the following pieces, parcels and tracts of land situate in the Counties of St. Louis and Lake in the State of Minnesota, described as follows, to-wit: Lots one (1), two (2), three (3), five (5) and six (6), the southwest quarter of the northeast quarter, the southeast quarter of the northwest quarter and the northwest quarter of the southeast quarter all being in section thirty (30) in township No. sixty-three (63) north of range eleven (11), west

of the 4th principal meridian in Minnesota, containing according to the government survey three hundred thirteen and 61-100 (313.61) acres of land more or less, which said Warranty Deed was upon

—4—

445 the 3rd day of November, A. D. 1885, at 2 o'clock P. M. duly recorded in the office of the Register of Deeds for St. Louis County, Minnesota, in Book A. 3 of Deeds, page 350 and in the office of the Register of Deeds for the County of Lake in the State of Minnesota, on the 5th day of December, A. D. 1885, at 3 o'clock P. M. in Book D. of Deeds, page 205. Now, therefore, we the said Orillie Stram and Roman Stram, parties of the first part do hereby fully ratify and confirm the said conveyances 446 of said land as above described to the said Frank W. Eaton by our said attorney in fact, the said Leonidas Merritt and do hereby and herein fully ratify and confirm all and every act, conveyance made and matter and thing done by our said attorney in fact Leonidas Merritt under and by virtue of the said power of attorney as aforesaid. For the purpose of more effectually ratifying and confirming the acts of our said attorney Leonidas Merritt and in consideration of the sum of one (1) 447 dollar to us in hand paid by the said party of the second part the receipt whereof is hereby confessed and acknowledged

—5—

have granted, bargained, sold and conveyed and by these presents do grant, bargain, sell and convey unto the said Frank W. Eaton, party of the

second part, his heirs, and assigns forever, an undivided seven-ninths part and interest in the following described tracts or parcels of land situate in the Counties of St. Louis and Lake and State of Minnesota, known and described as follows, to-wit:

448 Lots one (1), two (2), three (3), five (5) and six (6). The southwest quarter of the northeast quarter. The southeast quarter of the northwest quarter and the northwest quarter of the southeast quarter, all being in section thirty (30), in township No. sixty-three (63) north of range No. eleven (11) west of the 4th principal meridian in Minnesota, containing according to the government survey three hundred thirteen and sixty-one hundredths (313.61) acres more or less.

449 To have and to hold the same together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining to the said party of the second part, her heirs and assigns forever and the said parties of the first part for their heirs, executors and administrators, do covenant with the said party of the second part, his heirs and assigns forever, that they are well seized in fee of the said land and premises aforesaid, and have good right to sell
450 and convey the said land in manner and form aforesaid and that the same is free and clear from all incumbrances; and the above bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all persons lawfully claiming or to claim the whole or any part thereof the parties of the first part will warrant and defend.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

ORILIE STRAM, (Seal.)
Formerly Orilie Moreau.
ROMAN STRAM.

Signed and delivered in presence of 451

JAC. RAFFAUF.
ALEX. RAFFAUF.

STATE OF WISCONSIN, COUNTY OF CRAWFORD. 452

I, Jac. Raffauf, a notary public within and for said county, do hereby certify that on the 31 day of March, A. D. 1886, personally came

—6—

before me Orilie Stram formerly Orilie Moreau and Roman Stram, her husband, to me well known to be the same persons described in and who executed the foregoing instrument and they acknowledged that they executed the same freely and voluntarily for the uses and purposes therein mentioned. 453

JAC. RAFFAUF,
(Seal.) Notary Public,
For Crawford Co., Wisconsin.

OFFICE OF REGISTER OF DEEDS.

STATE OF MINNESOTA, COUNTY OF LAKE.—ss.

I hereby certify that the within instrument was filed in this office for record on the 24th day of April, A. D. 1886, at 8 o'clock A. M., and was
454 duly recorded in Book D. of Deed Records, page 264 and 265.

G. A. SCHULZE,
Register of Deeds.

By.....Deputy.

1648 "H" Warranty Deed and Confirmation. Or-
455 ilie Stram and husband, to Frank W. Eaton.

OFFICE OF REGISTER OF DEEDS.

COUNTY OF SAINT LOUIS.—ss.

I hereby certify that the within deed was filed in this office for record on the 3rd day of April, A. D. 1886, at 9 o'clock A. M., and was duly recorded in Book 8 of Deeds, page 46.

FRANK BURKE, Jr.,
Register of Deeds.

456 By.....Deputy.

Not entered for taxation this.....day of .....A. D. 18...

.....
County Auditor.

D. Patents, p. 269.

No. 12801.

UNITED STATES OF AMERICA TO FRANK HICKS, PATENT.

Filed for record February 18, 1899, at 4.15 P. M. 457

THE UNITED STATES OF AMERICA

To whom these presents shall come, Greeting.

Homestead Certificate No. 2053.

Application 10735.

Whereas there has been deposited in the General Land Office of the United States a certificate of the Register of the Land Office at Duluth, Minnesota, whereby it appears that pursuant to the 458
Act of Congress approved 20th May, 1862, "to secure homesteads to actual settlers on the public domain" and the acts supplemental thereto, the claim of Frank Hicks, assignee of Stephen Bond, has been established and duly consummated in conformity to law for the lots numbered three, five and six of section thirty in township sixty-three north of range eleven west of the fourth principal meridian in Minnesota, containing one hundred twenty-one acres and sixty one hundredths of an acre according to the official plat of the sur- 459
vey of the said land returned to the General Land Office by the surveyor general.

Now, know ye that there is therefore granted by the United States unto the said Frank Hicks the tract of land above described to have and to hold the said tract of land with the appurtenances thereof and to his heirs and assigns, forever.

In testimony whereof, I William McKinley, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Wash-
460 ington the tenth day of May, in the year of our Lord, one thousand eight hundred ninety eight, and of the independence of the United States the one hundred and twenty-second.

By the President,
WILLIAM McKINLEY,
By F. M. McKEAN, Secretary.

(United States General
Land Office.)

461 ———

Recorded Vol. 89, page 156.
C. H. BRUSH,
Recorder of the General Land Office.

———

(136 Deeds 42.)

Instrument No. 12802.

462 FRANK HICKS ET UX,
to
THE MIDWAY CO.
WARRANTY DEED.

Filed for record the 18 day of Feb., A. D. 1899, at 4:15 P. M.

.....
Register of Deeds.
By.....Deputy.

This indenture made this 21st day of October in the year of our Lord one thousand eight hundred ninety-seven, between Frank Hicks and Myrtie M. Hicks, his wife, of the county of St. Louis and State of Minnesota, parties of the first part, and The Midway Company (a corporation) of the County of St. Louis and State of Minnesota, 463

Witnesseth, that the said parties of the first part in consideration of the sum of five thousand($5,000.00)dollars to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell and convey unto the said party of the second part, its successors and assigns, forever, all the tracts or parcels of land lying and being in the County of Lake and State of Minnesota, described 464 as follows, to-wit:

Lots three (3), five (5) and six (6), section thirty (30), township sixty-three (63) north, range eleven (11) west 4th principal meridian.

To have and to hold the same together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining to the said party of the second part, its successors and assigns, forever. And the said Frank Hicks, one of the said parties of the first part, for himself, 465 his heirs, executors and administrators, does covenant with the said party of the second part, its successors and assigns, that he is well seized in fee of the lands and premises aforesaid and has good right to sell and convey the same in manner and form aforesaid, and that the same are free from all incumbrances, and the above bargained and granted lands and premises in the quiet and peaceable possession of the said party of the sec-

ond part, its successors, and assigns, against all persons lawfully claiming or to claim the whole or any part thereof the said party of the first part will warrant and defend.

In testimony whereof the said parties of the first part has hereunto set their hands and seals
466 the day and year first above written.

FRANK HICKS, (Seal.)
MYRTIE M. HICKS, (Seal.)

Signed, sealed and delivered in
presence of
B. H. HOLMES.
W. N. DRAPER.

---

467 STATE OF MINNESOTA, COUNTY OF ST. LOUIS.—ss.

On this 21st day of October, A. D. 1897, before me, a notary public, within and for said county, personally appeared Frank Hicks and Myrtie M. Hicks, his wife, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

468 B. H. HOLMES,
Notary Public,
St. Louis County, Minn.

(Notarial Seal St. Louis
County, Minn.)

(Copy of A. 3 Deeds, p. 350.)

Receipt.

Nov. 23rd, 1885, at 2 p. m.

Receiver's Receipt No. 7762.

Receiver's Office, Duluth, Minn.,

July 21st, 1885.

Received of Orillie Stram the sum of two dol- 469
lars....cents, being in full for one acre and 61 hundredths of lot 3, 5 and 6 and S. E. 1-4 of N. W. 1-4 section No. 30, in township No. 63, N. of range No. 11 W., being excess in said tract over the area entered under the Sioux half-breed scrip 19 E., R. and R., 188.

E. G. SWANSROM,

$2.00. Receiver.

470

(Copy of A. 3 Deeds, p. 350.)

Warranty Deed. Filed November 23rd, 1885, at 2 P. M.

This indenture made this thirtieth day of October in the year of our Lord one thousand eight hundred and eight-five, between Orillie Stram (before married Orillie Moreau) and Roman Stram, her husband, by Leonidas Merritt, their attorney 471
in fact, parties of the first part, and Frank W. Eaton of Duluth, Minnesota, party of the second part, witnesseth—

Whereas, on the 13th day of June, A. D. 1883, grantors herein by their attorney in fact, caused to be filed in the U. S. Land Office at Duluth, Minnesota, an application for certain lands and Sioux half-breed scrip No. 19 D. and No. 19 E. each for 160 acres of land there by virtue of the laws of

the United States and conditions precedent, which has been complied with, vesting the title to the said lands described in said application by metes and bounds in her, the said Orillie Stram (said description being by metes and bounds for the reason that said land had not yet been surveyed
472 by the government); and whereas, said land has since been surveyed under the direction of the government and a plat thereof filed in the said U. S. Land Office at Duluth, upon which said plat the aforesaid scrip and entry was adjusted July 21, 1885, thereby specifically and properly directing the land filed upon and intended to be entered on June 13th, 1883, in the name of said Orillie Stram, by her attorney in fact.

Now, therefore, in consideration of one dol-
473 lar and for the purpose of reaffirming, reforming and properly describing certain deeds of conveyance of said land heretofore given, said parties of the first part do hereby grant, bargain, sell and convey unto the said party of the second part, his heirs and assigns, forever, all of an undivided seven-ninths part of and interest in and to all of the following pieces, parcels and tracts of land, situate in the Counties of Saint Louis and Lake in the State of Minnesota, described as follows, to-
474 wit: Lots one (1), two (2), three (3), five (5) and six (6), the southwest quarter of the northeast quarter, and southeast quarter of the northwest quarter, and the northwest quarter of the southeast quarter, all being in section thirty (30) and in township No. sixty-three (63) north and of range No. eleven (11) west of the fourth (4) principal meridian in Minnesota, containing according to the United States government survey three hun-

dred thirteen and sixty-one hundredths (313.61) acres more or less.

To have and to hold the same together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining to the said party of the first part for their heirs, executors and administrators do covenant with the said party of the second part, his heirs and assigns, that they are well seized in fee of the said land and premises aforesaid and have good right to sell and convey the said land in manner and form aforesaid; that the same is free and clear from all incumbrances and the above bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all persons lawfully claiming or to claim the whole or any part thereof the said parties of the first part will warrant and defend. 475 476

In testimony whereof the said parties of the first part have by their attorney in fact hereunto set their hands and seals the day and year first above written.

Erasures in 2nd and 3rd lines of this page made before signing and interlineations made between 2nd and 3d line before execution.

ORILLIE STRAM, (Seal.) 477
By LEONIDAS MERRITT, (Seal.)
Her Attorney in Fact.
ROMAN STRAM, (Seal.)
By LEONIDAS MERRITT, (Seal.)
His Attorney in Fact.

Signed, sealed and delivered in presence of
R. N. MARBLE,
W. C. JOHNSON.

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

On this thirtieth day of October, A. D. 1885, before me, Ralph N. Marble, notary public in and for said county, personally came Leonidas Merritt, as the attorney in fact for Orillie Stram and Roman Stram and acknowledged that he executed
478 the foregoing deed freely and voluntarily as the free act of the said Orillie Stram and Roman Stram.

RALPH N. MARBLE,
Notary Public,
Saint Louis Co., Minnesota.

(Notarial Seal.)

479

COPY OF EXHIBIT 1.

"H."

M. C. S. (10c revenue stamp.) H. W. S.

Doc. Case 681.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., October 14, 1898.

480 I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of Exhibits "A," "B," "C," "D" "F," "G," "H," "I" and "J," in the case of Thos. W. Hyde et al., vs. Frank W. Eaton et al., involving lands in Sec. 30, T. 63 No. R. 11, Duluth Land District, Minnesota, are true and literal exemplifications of the originals as they appear of record on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

BINGER HERMANN,

Commissioner of the General Land Office.

(United States General Land Office.) 481

PRAIRIE DU CHIEN,
April 1, 1886.

Mess. White & Reynolds,

Gents.—Mr and Mrs. Stram are not coming up to your place, because Mr. Eaton has been here and received a Deed from Mr. and Mrs. Stram 482 for the scrip sold to Mr. Smith about 1 1-2 years ago.

I think this will settle all further trouble.

Resp. yours,

JAC. RAFFAUF.

Indorsed on the back: "Exhibit "A." Filed Apl 6, 1886.

483

(4-535.)

DECLARATORY STATEMENT FOR CASES WHERE THE LAND IS NOT SUBJECT TO PRIVATE ENTRY

I, James Henry Power of St. Louis Co., Minn., being a single man, over 21 years and a naturalized citizen of the U. S., have, on the 15th day of July,

A. D. 1882, settled and improved the S. 1-2 of N. W. 1-4 and S. W. 1-4 of N. E. 1-4 and N. E. 1-4 of S. W. 1-4 quarter of section number 17, in township number 59 N., of range number 17 W., in the district of lands subject to sale at the land office at Duluth, Minn., and containing—160— acres,
484 which land has not yet been offered at public sale, and thus rendered subject to private entry; and I do hereby declare my intention to claim the said tract of land as a pre-emption right, under the provisions of said act of 4th September, 1841.

Given under my hand this 2nd day of Oct., A. D. 1882.

JAMES HENRY POWER.

In presence of

Ag. M. DONCLE.

485 (9402-10 M.)

Indorsed on the back: "James Henry Power. No. 2929 Unoff.

Filed Oct. 2-82, by J. Grady.

"Exhibit B."

486

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

Edward Byrne, James H. Powers and Joseph Clement, of said county and state, being first duly sworn, make oath and say that they have made good and substantial improvements on the following described land, to-wit: In sections twenty-nine (29) and thirty (30) in township sixty-three

(63) north of range eleven (11) west of the 4th principal meridian, located under and by virtue of Sioux half-breed scrip No. 19, Letter "E" for 160 acres and by No. 19 Letter "D" Sioux scrip, issued to Orillie Stram (formerly Orillie Moreau) for and under the personal direction of Frank W. Eaton, attorney in fact of said Orillie Stram and Roman 487
Stram, her husband, and have made no improvements on said land either for themselves, or any other person, intending to claim the same under the Homestead or Pre-emption law, or for any purpose whatever, other than above described, and to our certain knowledge there is or has not been any improvements made on above described lands, by any other person or persons.

EDWARD BYRNE,
JAMES H. POWER, 488
JOSEPH CLEMENT.

Sworn to and subscribed before me
this second day of July, A. D. 1883.

CHAS. R. HAINES,
Notary Public, St. Louis Co., Minn.

(Notarial Seal.)

Indorsed on back: "Exhibit C." 86-99065-12.

489

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

James H. Powers, being duly sworn, deposes and says that he is well acquainted with the parcel of land included in the following described boundaries, commencing on quarter post on east side of section No. twenty-five of township No. sixty-three north of range No. twelve west in the

district of lands subject to entry at Duluth, Minnesota, thence north 80 rods, thence east 80 rods, thence north 80 rods, thence east 80 rods, thence south 80 rods, thence east 80 rods, thence south 80 rods, thence west 240 rods to place of beginning, being unsurveyed land, attempted to be located under Sioux half-breed scrip No. 19 E. issued
490 under the Act of Congress, approved July 17, 1854, entitled "An Act to authorize the President of the United States to cause to be surveyed the tract of land in the territory of Minnesota, belonging to the half-breeds or mixed bloods of the Dacotah or Sioux nation of Indians and for other purposes" in the name of Orillie Moreau, June 16th, 1883, and the other tract or parcel of land included within the following boundary lines commencing 240
491 rods east of the quarter post on east side of said section No. twenty-five of township No. sixty-three north of range No. twelve west, aforesaid, thence south 80 rods, thence east 80 rods, thence north 80 rods, thence east 80 rods, thence north 160 rods, thence west 80 rods, thence south 80 rods, thence west 80 rods, thence south 80 rods to the place of beginning, being unsurveyed land, attempted to be located under Sioux half-breed scrip No. 19 D., under said hereinbefore mentioned Act of Congress, in the name of Orillie Moreau, on said
492 16 day of June, 1883, and was so acquainted with said parcels of land June 16, 1883. That this deponent, Edward Byrne and Joseph Clement, made the improvements and all the improvements made on said parcel of land, commencing the same on or about the second day of June, 1883, and closing the same on or about the twenty-fourth day of June, 1883, that neither this deponent nor said Byrne or Clement were in the employ nor

did they make said improvements in the service or under the personal supervision or direction of said Orillie Moreau, nor of any agent or attorney of hers, nor was said Orillie Moreau or any other Sioux half-breed Indian, at any time while said improvements were being made, upon said parcels of lands nor was there any agent or attorney of said Orillie Moreau in any manner concerned in making said improvements on said parcels of land. Deponent further says that at the time they made said improvements, he and said Byrne made them intending and purposing this deponent to take the second above described parcel of land as his homestead and said Byrne to take said first above described parcel of land as his homestead, under the Act of Congress commonly known as the homestead law, and further, deponent says not. 493 494

JAMES H. POWER,

Subscribed and sworn to before me
this 8th day of August, 1884.

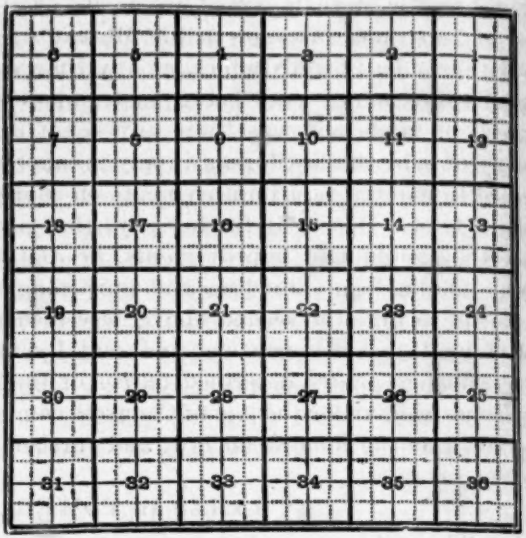
CHARLES J. BOWER,
Notary Public, St. Louis Co., Minn.

(Notarial Seal.)

(Indorsed on back) "Exhibit D., U. S. Land Office, Duluth, Minn. Affidavit of James H. Powers, Thomas W. Hyde and Angus McDonald vs. Orillie Stram, nee Moreau. Filed Oct. 9th, 1884, J. R. Carey, Reg." 495

Township No. 63 N., Range No. 11 W., 4th P. M.

496



497

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

U. S. LAND OFFICE,
Duluth, Minn.

498

In the matter of the application of Orillie Stram, formerly Orillie Moreau, to locate Sioux half-breed scrip No. 19 Letter D., for one hundred sixty acres of land.

Frank W. Eaton being duly sworn on his oath, says that he is the attorney in fact of said Orillie Stram, and is duly authorized by her to locate the scrip above described, and that he has so located the same as such attorney in fact on

the following described unsurveyed real estate within the limits of the Duluth Land district, to-wit:

Commencing at the quarter post on the east line of section twenty-five (25), town sixty-three (63) north of range twelve (12) west of the fourth principal meridian, thence north on said section 499
line 80 rods (80), thence east eighty (80) rods, thence north eighty rods (80), thence east eighty (80) rods, thence south eighty (80) rods, thence east eighty (80) rods, thence south eighty (80) rods, thence west two hundred and forty (240) rods to the place of beginning, which said property when surveyed will be described as follows, to-wit: The northeast quarter of the northwest quarter (N. E. 1-4 of N. W. 1-4) the south half of the northwest quarter (S. 1-2 of N. W. 1-4) and the 500
southwest quarter of the northeast quarter (S. W. 1-4 of the N. W. 1-4) of section thirty (30) in township sixty-three (63) north of range eleven (11) west of the fourth principal meridian. That he has as such attorney built upon said land a dwelling house fourteen by sixteen feet, one story high, built of timber and covered with split shingles with door and windows, and had cleared ready for cultivation one-half acre of said land. That said improvements were made under the personal 501
direction of said Orillie Stram and for her personal use and benefit and under and by authority of said power of attorney hereto attached.

FRANK W. EATON.

Sworn and subscribed before me this
16th day of June, A. D. 1883.

J. R. CAREY,
Register.

Scrip Certificate No. 19 D. Register and Receiver's No. .....

SIOUX HALF-BREED RESERVE AT LAKE PEPIN

Act of July 17, 1854.

502 LAND OFFICE,

Duluth, Minnesota, June 16, 1883.

We hereby certify, that the attached half-breed scrip, No. 19 Letter D., was on this day received at this office from Orillie Stram, of Crawford county, State of Wisconsin, by F. W. Eaton, her attorney in fact.

J. R. CAREY,
Register.

W. W. SPALDING,
503 Receiver.

I, Orillie Stram, formerly Orillie Moreau of Crawford county, State of Wisconsin, hereby apply to locate, and do locate, the following unsurveyed tract of land, designated as follows, to-wit: Commencing at the quarter post on the east line
504 of section twenty-five (25), town sixty-three (63), north of range twelve (12) west of the fourth principal meridian, thence north on said section line eighty rods, thence east eighty rods, thence north eighty rods, thence east eighty rods, thence south eighty rods, thence east eighty rods, thence south eighty rods, thence west two hundred and forty rods to the place of beginning, containing one hundred sixty acres, in the district of lands, subject to sale at the Land Office at Duluth, Minn.,

in satisfaction on the attached scrip No. 19 Letter D., issued under the Act of Congress, July 17th, 1854.

Witness my hand and seal this 16th day of June, 1883.

ORILIE STRAM, by (Seal.)

Attest: 505

F. W. EATON,
Her Attorney in Fact.

LAND OFFICE,
Duluth, Minn., June 16, 1883.

We hereby certify, that the annexed scrip No. 19 Letter D., has been this day located on the unsurveyed tract of land, as described within, containing one hundred sixty (160) acres, agreeably to the Act of Congress of July 17, 1854, and by the party duly authorized to make such location. 506

J. R. CAREY,
Register.

W. W. SPALDING,
Receiver.

507

(Indorsed on back.)

Land Office, Duluth, Minn., June 16, 1883.

Richard Fagan being duly sworn, says: I am acquainted with the unsurveyed tract of land described within, by personal examination of the same, on the tenth 10th day of June, 1883,and that there was no person living on the same at that

time, nor were there any improvements on it, except those of Orillie Stram, nor any person claiming said tract.

RICHARD FAGAN.

Sworn and subscribed before me
this 16th day of June, 1883.

508 J. R. CAREY,
Register.

Scrip Certificate No. 19 D. Register and Receiver's No. 188.

SIOUX HALF-BREED RESERVE AT LAKE PEPIN.

509 Act of July 17, 1854.

LAND OFFICE, July 21st, 1885.

We hereby certify, that the attached half-breed scrip No. 19 Letter D., was on this day adjusted by Orillie Stram, formerly Orillie Moreau, St. Louis county, State of Minnesota.

G. G. HARTLEY,
Register.
E. G. SWANSTROM,
Receiver.

510

I, Orillie Stram, formerly Orillie Moreau, of Crawford County, State of Wisconsin, hereby apply to locate, and do locate, the.....tract of land, designated as follows, to-wit: Lots number three (3), five (5), and six (6), and southeast quarter of northwest quarter of section thirty (30) in town-

ship number sixty-three (63) north of range eleven (11) west of 4th principal meridian.

(The above location is hereby made to adjust to the U. S. survey of the location made June 16th, 1883, upon unsurveyed land of half-breed scrip, No. 19 Letter D., issued under the Act of Congress July 17th, 1854.) 511

Containing one hundred sixty-one and 67-100 acres, in the district of lands subject to sale at the Land Office at Duluth, Minn., in satisfaction of the attached scrip No. 19 Letter D issued under the Act of Congress, July 17th, 1854.

Witness my hand and seal this 21st day of July, 1885.

ORILIE STRAM, (Seal.)
By F. W. EATON, 512
Her Attorney in Fact.

Attest:
N. B. THAYER.

Cancelled by Dept. Decision of Feby. 18, 1889, affirming ours of March 7, 1887.

See to R. & R., Feby. 19, 1889.

E. S. E.

513

LAND OFFICE,
July 21st, Duluth, 1885.

We hereby certify, that the annexed scrip, No. 19 Letter D., has been this day adjusted on the tract of land, as described within, containing 161. 61-100 acres, agreeably to the Act of Congress

of July 17, 1854, and by the party duly authorized to make such location.

G. G. HARTLEY,
Register.

E. G. SWANSTROM,
Receiver.

514 Excess receipt No. 7762 for $1.61-100 acres at $1.25 per acre, $2.00.

(Indorsed on the back as follows.)

See to James A. George, April 18, 1895.
Land Office,..... 187 33332
See to James A. George, April 30, 1895.
515 A. M. H.
being duly sworn says: I am acquainted with the.....tract
See to R. & R., May 18, 1895, telegram, Div "A."
A. M. H.
of land described within, by personal examination of the same
See to Geo. J. Lonstorf, May 6 and 18, 1895,
A. M. H.
516 on the .....day of.....187... and that there was no person
See to R. and R., Aug. 2, 1895, enclosing scrip.
A. M. H.
living on the same at that time, nor were there any improve-
See to Burdette Thompson and Low, Aug. 5, 1895.
A. M. H.
ments on it except those of..... nor any person claiming

See to James A. George, Aug. 5, 1895.

A. M. H.

said tract

Sworn and subscribed before me this.....
day of .....of.....187...

.....

Register. 517

(Also indorsed.)

Exhibit F.

Filed Apl 14, 1886. R. & R. No. 187. "C" to R. and R., Dec. 30-95.

518

U. S. Land Office, Duluth, Minn., July 21st, 1885, "C" to Hon. Edward "C" Stringer.

Feby. 19, 1896, as to delivery of this scrip Sioux half-breed scrip certificate 19 D., Register No. 188. Located by F. W. Eaton, attorney in fact for Orillie Moreau. Sec. 30, Tp. 63 N., R. 11 W. 519

Noted on scrip record.

Cancelled by Dept. decision of Feby. 18, 1889, affirming ours of Mch 7-87. See to R. & R., Feby. 19, 1889. E. S. E. Div. "H." Posted in tract Book, Sept. 9-1885.

Cancellation noted June 4-89. M. P. W.

See to R. & R., April 17, 1885. A. M. H.

(Over.)

9-250.

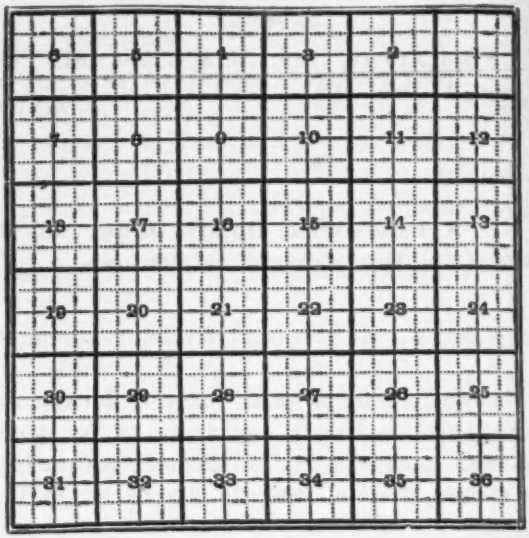
86-99065-14.

"C" to Secretary, Sept. 17, 1895.

520

Township No. 63 N., Range 11 W., 4th P. M.

521



522

U. S. LAND OFFICE,
Duluth, Minn.

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

In the matter of the application of Orillie Stram to locate Sioux half-breed scrip No. 19, Letter E., for 160 acres of unsurveyed land. 523

Richard Fagan, being first duly sworn on his oath, says that he is acquainted with Frank W. Eaton and with the land described above. That he has been upon said land and knows the character of the improvements thereon and that such improvements consist of a one story dwelling house, fourteen by sixteen feet, with door and window, and shingle roof, that there is cleared on said land about one-half acre.

RICHARD FAGAN. 524

Sworn and subscribed before me
this 16th day of June, A. D. 1883.

J. R. CAREY,
Register.

U. S. LAND OFFICE,
Duluth, Minn.

STATE OF MINNESOTA, COUNTY OF ST. 525 Louis.—ss.

In the matter of the application of Orillie Stram, formerly Orillie Moreau, to locate Sioux half-breed scrip No. 19, Letter E., for one hundred sixty acres of land.

Frank W. Eaton, being duly sworn on his oath says, that he is the attorney in fact of said Orillie Stram,

and is duly authorized to locate for her the scrip above described, and that he has so located the same upon the following described unsurveyed land in the Duluth Land District, to-wit: Starting at the quarter post on the east line of section twenty-five (25) in town sixty-three (63) north of
526 range twelve (12), west of the fourth principal meridian, thence east two hundred and forty rods (240) to the place of beginning of the land located, thence south eighty (80) rods, thence east eighty (80) rods, thence north eighty (80)rods, thence east eighty (80) rods, thence north one hundred sixty rods, thence west eighty (80) rods, thence south eighty(80)rods,thence west eighty (80) rods, thence south eighty (80) rods, to the place of beginning, which said land when surveyed will be described
527 as follows, to-wit: The southeast quarter of the northeast quarter(S. E. 1-4 of N. E. 1-4), the northeast quarter of the southeast quarter (N. E. 1-4 of S. E. 1-4) of section thirty (30), and the west half of the northwest quarter (W. 1-2 of N. W. 1-4) of section twenty-nine (29), in town sixty-three (63) north of range eleven (11) west of the fourth principal meridian, that he has as such attorney, built upon said land a dwelling house fourteen by sixteen feet, one story high, built of timber and
528 covered with split shingles with door and windows, and has cleared ready for cultivation one-half acre of said land.

That said improvements were made under the personal direction of said Orillie Stram and for her personal use and benefit and under and by authority of said power of attorney hereto attached.

FRANK W. EATON.

Sworn and subscribed before me
this 16th day of June, A. D. 1883.

J. R. CAREY,
Register.

529

U. S. LAND OFFICE,
Duluth, Minn.

STATE OF MINNESOTA, COUNTY OF ST. Louis —ss.

Richard Fagan, being duly sworn on his oath, says, that he is acquainted with Frank W. Eaton, the affiant in the affidavit hereto attached, that he is acquainted with the land described in said affidavit, and has been on the said land, that he has read said affidavit and knows the contents thereof and knows of his own knowledge that the improvements therein described have been made as therein described and are not on the said land, and the statements in said affidavit, made in regard to said improvements are correct. 530

RICHARD FAGAN.

Sworn and subscribed before me 531
this 16th day of June, A. D. 1883.

J. R. CAREY,
Register.

Scrip Certificate No. 19 E. Register and Receiver's No. .....

SIOUX HALF-BREED RESERVE AT LAKE PEPIN.

Act of July 17, 1854.

LAND OFFICE, Duluth, Minn.,
July 16, 1883.

532 We hereby certify, that the attached half-breed scrip No. 19, Letter E., was on this day received at this office from Orillie Stram of Crawford County, State of Wisconsin, by Frank W. Eaton, her attorney in fact.

J. R. CAREY,
Register.

W. W. SPALDING,
Receiver.

533 ———

I, Orillie Stram, formerly Orillie Moreau, of Crawford County, State of Wisconsin, hereby apply to locate, and do locate, the unsurveyed tract of land, designated as follows, to-wit: Starting at the quarter post on the east line of section twenty-five (25) in town sixty-three (63) north of range twelve (12) west of the fourth principal meridian, thence east two hundred forty rods to the place
534 of beginning of the land located, thence south eighty (80) rods, thence east eighty (80) rods, thence south eighty (80) rods, thence east eighty (80) rods, thence north one hundred sixty rods, thence west eighty (80) rods, thence south eighty (80) rods, thence west eighty (80) rods, thence south eighty (80) rods to the place of beginning, containing one hundred sixty (160) acres, in the District of Lands subject to sale at the Land Office at Duluth, Minn., in satisfaction of the at-

tached scrip No. 19, Letter E., issued under the Act of Congress, July 17th, 1854.

Witness my hand and seal this 16th day of June, 1883.

ORILLIE STRAM, (Seal.)
By F. W. EATON,
Her Attorney in Fact. 535

Attest:

LAND OFFICE, Duluth, Minn.,
June 16, 1883.

We hereby certify, that the annexed scrip, No. 19, Letter D., has been this day located on the unsurveyed tract of land, as described within, containing one hundred sixty (160) acres, agreeably to the Act of Congress of July 17, 1854, and by the party duly authorized to make such location. 536

J. R. CAREY,
Register.
W. W. SPALDING,
Receiver.

537

Indorsed on the back as follows:

LAND OFFICE, Duluth, Minn.,
June 16, 1883.

Richard Fagan, being duly sworn, says: I am acquainted with the unsurveyed tract of land described within, by personal examination of the same on the ninth (9th) day of June, 1883, and that there was no person living on the same at

that time, nor were there any improvements on it, except those of Orillie Stram nor any person claiming said tract.

RICHARD FAGAN.

Sworn and subscribed before me this 16th day of June, 1883.

538 J. R. CAREY,
Register.

Scrip Certificate No. 19 E. Register and Receiver's No. 187.

SIOUX HALF-BREED RESERVE AT LAKE PEPIN.

539 Act of July 17, 1854.

LAND OFFICE, Duluth, Minn.,
July 21st, 1885.

We hereby certify, that the attached half-breed scrip No. 19 D., Letter D., was on this day adjusted at this office for Orillie Moreau of St. Louis County, State of Minnesota.

G. G. HARTLEY,
Register.

540 E. G. SWANSTROM,
Receiver.

I, Orillie Stram, formerly Orillie Moreau, of Crawford County, State of Wisconsin, hereby apply to locate, and do locate, the tract of land designated as follows, to-wit: Lots number one (1),

and two (2) and southwest quarter of northeast quarter and northwest quarter of southeast quarter of section thirty (30) north, of range eleven (11) west of the 4th principal meridian.

(The above location is hereby made to adjust to the U. S. survey the location made June 16th, 1883, upon unsurveyed land of half-breed scrip 541
No. 19, Letter E., issued under the Act of Congress July 17, 1854.)

Containing one hundred and fifty-two acres, in the District of Lands, subject to sale at the Land Office at Duluth, Minn., in satisfaction of the attached scrip, No. 19, Letter E., issued under the Act of Congress, July 17th, 1854.

Witness my hand and seal this 21st day of July, 1885.

ORILLIE STRAM, (Seal.) 542
By F. W. EATON,
Her Attorney in Fact.

Attest:

N. B. THAYER.

Cancelled by Dept. decision of Feby. 18, 1889, affirming office decision of March 7-87. See to R. & R., Feby. 19, 1889.

543

LAND OFFICE, Duluth, Minn.,
July 21st, 1885.

We hereby certify, that the annexed scrip, No. 19, Letter E, has been this day located on the ....tract of land, as described within, containing 152 acres, agreeably to the Act of Congress of July

17, 1854, and by the party duly authorized to make such location.

G. G. HARTLEY,
Register.

E. G. SWANSTROM,
Receiver.

544

(Indorsed on back as follows.)

Land Office,..... 187
See to James A. George, April 18, 1895.
33332
being duly sworn says: I am acquainted with
the.....tract
545 See to James A. George, April 30, 1895.
A. M. H.
of land described within, by personal examination of the same
See telegram May 18, 1895, to R. & R. calling for report Div. A. A. M. H.
on the .....day of.....187... and that there was no person
See to Geo. L. Lonstorf, May 6 and 18, 1895,
A. M. H.
546 living on the same at that time, nor were there
See to R. and R., Aug. 2, 1895, enclosing scrip.
A. M. H.
any improvements on it except those of...nor any
See to Burdette Thompson and Low, Aug. 5, 1895.
A. M. H.
person claiming said tract.
See to James A. George, Aug. 5, 1895.
A. M. H.

Sworn and subscribed before me this.....
day of.....187....

.....
Register.

547

(Also indorsed on back as follows.)

Exhibit F. Filed Apl. 14-86. R. & R., No. 188 "C" to R. & R., Dec. 30-95.

U. S. Land Office, Duluth, Minn., July 21, 1885. "C" to Hon. E. C. Stringer as to delivery of this scrip, Feby. 19-96. Sioux half-breed scrip 548
certificate, 19 E., Register's No. 187. Located by F. W. Eaton, attorney in fact for Orillie Moreau Sec. 30, Tp. 63, N. R. 11, W. Noted on Scrip records H. Cancelled by Dept. decision of Feby. 18, 1889, affirming ours of Mch 7-87. See to R. & R. Feby. 19-89, E. S. E. Div. "H." Posted on tract book Sept 9-85. Cancellation noted June 4-89. J. M. R. W. P. W. See to R. & R., April 17, 1895, A. M. H. 9-230. 86-99065.

(Over.)

549 "C" to Secretary, Sept. 17, 1895.

This indenture made this 31st day of March, in the year of our Lord one thousand eight hundred and eighty-six, between Orillie Stram (before marriage Orilie Moreau) and Roman Stram, her husband, of Crawford County and State of

Wisconsin, parties of the first part, and Frank W. Eaton, of Duluth, St. Louis County, State of Minnesota, party of the second part.

Witnesseth, that whereas, the said Frank W. Eaton, as our duly constituted and appointed attorney in fact, did on the 16th day of June, A. D.
550 1883, caused to be filed in the U. S. Land Office at Duluth, Minnesota, an application for certain lands and Sioux half-breed scrip, No. 19 D., and No. 19 E., each for 160 acres of land, thereby by virtue of the laws of the United States and conditions precedent which had been complied with by the said Frank W. Eaton, our attorney in fact as aforesaid, vesting the title to the said land as described in said application by metes and bounds in me, the said Orillie Stram (the said
551 description being by metes and bounds for the reason that the said land had not yet been surveyed by the United States) which said land has since been surveyed by the government and a plat thereof filed in the United States Land Office at Duluth, Minnesota, and upon said plat the aforesaid scrip and entry was adjusted July 21st, A. D. 1885, thereby specifically and perfectly describing the land filed upon for me, the said Orillie Stram, by the said Frank W. Eaton, and intended to be en-
552 tered on June 16th, A. D. 1883, in the name of me, the said Orillie Stram, by our attorney in fact, the said Frank W. Eaton, and

Whereas, we, the said Orillie Stram and Roman Stram, did on the 25th day of May, A. D. 1883, by two certain powers of attorney, duly executed, acknowledged and delivered by us to Leonidas Merritt, of Duluth, St. Louis County, State of Minnesota, which said powers of attorney were duly recorded in the office of the Regis-

ter of Deeds, for St. Louis County, Minnesota, in Book "A" of Powers of Attorney, on pages 613 and 614 therein and thereby constituting and appointing the said Leonidas Merritt the attorney in fact of the said Orillie Stram, with full power and authority in her name and stead to grant, bargain, sell, demise, lease, convey and confirm the said lands which we then owned or which we might thereafter acquire, or become seized of under and by virtue of locations of Sioux half-breed scrip No. 19 E., for 160 acres of land and No. 19 D., for 160 acres of land, issued to me, the said Orillie Stram, and 553

Whereas, the said Leonidas Merritt, as our attorney in fact, on the 30th day of October, A. D. 1885, did by Warranty Deed, duly executed by him, convey to the said Frank W. Eaton, an undivided seven-ninths part and interest in the said lands which, according to the said survey and plat and in said deed are described as follows, to-wit: "All of the following pieces, parcels and tracts of land situate in the Counties of St. Louis and Lake, in the State of Minnesota, described as follows, to-wit: Lots one (1), two (2), three (3), five (5) and six (6), the southwest quarter of the northeast quarter, the southeast quarter of the northwest quarter and the northwest quarter of the southeast quarter, all being in section thirty (30) in township No. sixty-three (63) north of range eleven (11) west of the 4th principal meridian in Minnesota, containing according to the government survey three hundred thirteen and 61-100 (313.61) acres of land, more or less, which said warranty deed was upon the 3rd day of November, A. D. 1885, at 2 o'clock P. M., duly recorded in the office of the Register of Deeds 554 555

for St. Louis County, Minnesota, in Book A. 3 of Deeds, for the County of Lake in the State of Minnesota, on the 5th day of December, A. D. 1885, at 3 o'clock P. M., in Book D., of Deeds, page 205. Now therefore, we, the said Orillie Stram and Roman Stram, parties of the first part, do
556 hereby fully ratify and confirm the said conveyance of said land as above described to the said Frank W. Eaton, by our said attorney in fact, the said Leonidas Merritt and do hereby and herein fully ratify and confirm all and every act, conveyance made and matter and thing done by our said attorney in fact, Leonidas Merritt, under and by virtue of the said power of attorney as aforesaid. For the purpose of more effectually ratifying and confirming the acts of our said attorney,
557 Leonidas Merritt, and in consideration of the sum of one (1) dollar to us in hand paid, by the said party of the second part, the receipt whereof is hereby confessed and acknowledged have granted, bargained, sold and conveyed and by these presents do grant, bargain, sell and convey unto the said Frank W. Eaton, party of the second part, his heirs or assigns, forever, an undivided seven-ninths part and interest i nthe following described tracts, pieces or parcels of land situate in the Counties of St. Louis and Lake and State of Min-
558 nesota, known and described as follows, to-wit:

Lots one (1), two (2), three (3), five (5) and six (6), the southwest quarter of the northeast quarter, the southeast quarter of the northwest quarter and the northwest quarter of the southeast quarter, all being in section thirty (30) in township No. sixty-three (63) north of range No. eleven (11) west of the 4th principal meridian in Minnesota, containing according to the government sur-

vey three hundred thirteen and sixty-one hundredths (313.61) acres, more or less.

To have and to hold the same together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining to the said party of the second part, his heirs and assigns forever, and the said parties 559
of the first part for their heirs, executors and administrators, do covenant with the said party of the second part, his heirs and assigns forever, that they are well seized in fee of the said land and premises aforesaid, and have good right to sell and convey the said land in manner and form aforesaid and that the same is free and clear from all incumbrances; and the above bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and as- 560
signs, against all persons lawfully claiming or to claim the whole or any part thereof, the said parties of the first part will warrant and defend.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

ORILLIE STRAM, (Seal.)
Formerly Orilie Moreau.

ROMAN STRAM.

Signed and delivered in pres- 561
ence of

JAC. RAFFAUF.
ALEX. RAFFAUF.

STATE OF WISCONSIN, COUNTY OF CRAWford.—ss.

I, Jac Raffauf, a notary public within and for said county, do hereby certify that on this 31st day of March, A. D. 1886, personally came before me Orillie Stram, formerly Orillie Moreau,
562 and Roman Stram, her husband, to me well known to be the same persons described in and who executed the foregoing instrument and they acknowledged that they executed the same freely and voluntarily for the uses and purposes therein mentioned.

JAC. RAFFAUF,
Notary Public, for
(Seal.) Crawford Co., Wisconsin.

563

OFFICE OF REGISTER OF DEEDS.

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

I hereby certify that the within instrument was filed in this office for record on the 24th day of April A. D., 1886, at 8 o'clock A. M., and was duly recorded in Book D. of Deed Records, page 264 and 265.

564 G. A. SCHULZE,
Register of Deeds.
By.....Deputy.

EXHIBIT H.

Warranty deed and confirmation. Orillie Stram and husband, to Frank W. Eaton.

OFFICE OF REGISTER OF DEEDS.

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

I hereby certify that the within deed was filed in this office for record on the 3rd day of April, A. D. 1886, at 10 o'clock A. M., and was duly recorded in Book 8 of Deeds, page 46. 565

FRANK BURKE, JR.,
Register of Deeds.

By.....Deputy.

Not entered for taxation this.....
day of.....A. D. 18....
.....
County Auditor.

566

Know all men by these presents, that Orillie Stram, formerly Orillie Moreau, and Roman Stram, her husband, of Crawford County, and State of Wisconsin, of the..... ..... have made, constituted and appointed, and by these presents do make, constitute and appoint Leonidas Merritt of St. Louis County, in the State of Minnesota, our true and lawful attorney for us, or each of us individually, 567 and in our name, place and stead, to enter into and upon, and take possession of any and all pieces and parcels of land or the timber and other materials thereon, in the State of Minnesota which we now own, or which we may hereafter acquire or become seized of, or in which we may now or hereafter be in anyway interested; under and by virtue of location of Sioux (or Dakota) half-breed scrip No. 19, Letter "D" for 160 acres, issued to

the said Orillie Moreau, now Orillie Stram, under Act of July 17, 1854, United States statutes at large, page 304, chapter 83, authorizing the issuance of said scrip in exchange for lands of the Sioux half-breed reserve at Lake Pepin, Minnesota; and to prosecute and defend any and all
568 suits at law, for us, and each of us individually, in the courts of said State of Minnesota, or of the United States, relating to the title to said lands; we further authorize and empower our said attorney to grant, bargain, sell, demise, lease, convey and confirm said land, or any part thereof, or the right to sever and remove timber and other materials therefrom, to such person or persons, and for such prices as to our said attorney shall seem meet and proper, and thereupon to execute,
569 acknowledge and deliver in our name and on our behalf any deeds, leases, contracts or other instruments, sealed, or unsealed, and with or without covenants and warranty, as to him shall seem meet to carry out the foregoing powers; with full power to our said attorney to appoint a substitute or substitutes to perform any of the acts which our said attorney is by this instrument authorized to perform, with the right to revoke such appointments at pleasure. Hereby giving and granting to our said attorney or his substi-
570 tute or substitutes full power to do and perform anything proper or convenient in carrying out and executing said powers, as fully as we, or each of us individually, could do if personally present and acting in the premises. And we do further authorize and empower our said attorney, from time to time and at all or any time hereafter, to make and execute, or cause to be made and executed any such further deeds, conveyances, de-

mises or leases to said lands or any part thereof, for the further and more perfect assurance and confirmation of the title to said premises, to the purchaser or purchasers, their heirs or assigns.

And we hereby revoke all powers of attorney by us heretofore made, authorizing any person to do any act relative to any part of said lands. 571

Hereby ratifying and confirming whatsoever our said attorney or any substitute appointed by him may do in the premises by virtue thereof.

In witness whereof, we have set our hands and seals this twenty-fifth day of May, A. D. 1883

ORILLIE STRAM, (Seal.)
Formerly Orillie Moreau, Scripee.

ROMAN STRAM, (Seal.) 572

Signed, sealed and delivered in presence of
JAC. RAFFAUF.
LYDIA LEROUX.

STATE OF WISCONSIN, COUNTY OF CRAWFORD—ss.

Be it remembered, that on this 25th day of May in the year one thousand eight hundred and eighty-three, before me, Jac. Raffauf, a notary public, within and for said County and State personally appeared Orillie Moreau, now Orillie Stram, and Roman Stram, her husband, well known to me to be the persons who are described in and who executed the within and foregoing instrument, and severally duly acknowledged to me, that they executed the same freely. And the 573

said Orillie Stram, formerly Orillie Moreau, who is described as a married woman, and whose name is subscribed to the within and foregoing instrument, upon an examination without the hearing of her husband, being first by me made acquainted with the contents of said instrument, thereupon acknowledged to me that she executed the same
574 freely, and that she did not wish to retract such execution.

In witness whereof I have hereunto set my hand and official seal at said county, the day and year above written.

JAC. RAFFAUF,
Notary Public,
(Seal.) Crawford County, Wisconsin.

575

Indorsed on back:

EXHIBIT I, 3831.

OFFICE OF REGISTER OF DEEDS, COUNTY of Saint Louis.—ss.

576 I hereby certify that the within power of attorney was filed in this office for record on the 22nd day of June, A. D. 1883, at 2 o'clock P. M., and was duly recorded in Book A. of Power of Attorney, page 63.

J. A. MANNHEIM,
Register of Deeds.
By I. C. VAN NORMAN,
Deputy.

19 D. LAKE CO.

REGISTER'S OFFICE, LAKE COUNTY, MINN.

—88.

Received for record this 14th day of July, A. D. 1883, at 4 o'clock P. M., and was duly recorded in Book "B" of Deeds, page 596 to 598.

PAUL F. E. WILLARD, 577
Register of Deeds.

(Seal.)

86-99065-17.

Know all men by these presents, that we, Orillie Stram, formerly Orillie Moreau, and Roman Stram, her husband, of Crawford County, and State of Wisconsin, of the..... 578 ..... have made, constituted and appointed, and by these presents do make, constitute and appoint Leonidas Merritt of St. Louis County, in the State of Minnesota, our true and lawful attorney for us, or each of us individually, and in our name, place and stead, to enter into and upon, and take possession of any and all pieces and parcels of land or the timber and other materials thereon, in the State of Minnesota which we now own, or which we may hereafter acquire 579 or become seized of, or in which we may now or hereafter be in anyway interested; under and by virtue of location of Sioux (or Dakota) half-breed scrip No. 19, Letter "E" for 160 acres, issued to the said Orilie Moreau, now Stram, under Act of July 17, 1854, United States statutes at large, page 304, chapter 83, authorizing the issuance of said scrip in exchange for lands of the Sioux half-breed reserve at Lake Pepin, Minne-

sota; and to prosecute and defend any and all suits at law, for us, and each of us individually, in the courts of said State of Minnesota, or of the United States, relating to the title to said lands; we further authorize and empower our said attorney to grant, bargain, sell, demise, lease, convey and confirm said land, or any part thereof, or
580 the right to sever and remove timber and other materials therefrom, to such person or persons, and for such prices as to our said attorney shall seem meet and proper, and thereupon to execute, acknowledge and deliver in our name and on our behalf any deeds, leases, contracts or other instruments, sealed, or unsealed, and with or without covenants and warranty, as to him shall seem meet to carry out the foregoing powers; with full power to our said attorney to appoint a substi-
581 tute or substitutes to perform any of the acts which our said attorney is by this instrument authorized to perform, with the right to revoke such appointments at pleasure. Hereby giving and granting to our said attorney or his substitute or substitutes full power to do and perform everything proper or convenient in carrying out and executing said powers, as fully as we, or each of us individually, could do if personally present and acting in the premises. And we do further
582 authorize and empower our said attorney, from time to time and at all or any time hereafter, to make and execute, or cause to be made and executed any such further deeds, conveyances, demises or leases to said lands or any part thereof, for the further and more perfect assurance and confirmation of the title to said premises, to the purchaser or purchasers, their heirs or assigns.

And we hereby revoke all powers of attorney by us heretofore made, authorizing any person to do any act relative to any part of said lands.

Hereby ratifying and confirming whatsoever our said attorney or any substitute appointed by him may do in the premises by virtue thereof.

In witness whereof, we have set our hands and seals this twenty-fifth day of May, A. D. 1883. 583

ORILIE STRAM, (Seal.)
Formerly Orillie Moreau, Scripee.
ROMAN STRAM, (Seal.)

Signed, sealed and delivered in presence of
JAC. RAFFAUF, (Seal.)
LYDIA LEROUX, (Seal.)

584

STATE OF WISCONSIN, COUNTY OF CRAWFORD—ss.

Be it remembered, that on this 25th day of May, in the year one thousand eight hundred and eighty-three, before me, Jac. Raffauf, a notary public, within and for said County and State personally appeared Orilie Stram, and 585
Roman Stram, her husband, well known to me to be the persons who are described in and who executed the within and foregoing instrument, and severally duly acknowledged to me, that they executed the same freely. And the said Orillie Stram, formerly Orillie Moreau, who is described as a married woman, and whose name is subscribed to the within and foregoing instrument, upon an examination without the hearing

of her husband, being first by me made acquainted with the contents of said instrument, thereupon acknowledged to me that she executed the same freely, and that she did not wish to retract such execution.

In witness whereof I have hereunto set my
586 hand and official seal at said county, the day and year above written.

JAC. RAFFAUF,
Notary Public,
(Seal.) Crawford County, State of Wisconsin.

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587 EXHIBIT J.

OFFICE OF REGISTER OF DEEDS, COUNTY of Saint Louis.—ss.

I hereby certify that the within power of attorney was filed in this office for record on the 22nd day of June, A. D. 1883, at 2 o'clock P. M., and was recorded in Book A. of Power of Attorney, page 614.

J. A. MANNHEIM,
Register of Deeds.
588 By I. C. VAN NORMAN,
Deputy.

19 E. ST. LOUIS CO.
86-99065-9.

COPY OF EXHIBIT 2.

F. L. C. J. T. S.
E. P.

UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR,
Washington, D. C., July 16, 1898.

589 Pursuant to Section 882 of the Revised Statutes, I hereby certify that the annexed is a true copy of the original on file in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the Interior to be affixed, the day and year first above written.

C. N. BLISS,
Secretary of the Interior.

(Department of the Interior.) 590

ORILLIE STRAM and ANGUS McDONALD,
vs.
FRANK W. EATON, and the location of S. H. B. Scrip, 19 D., on Lots 3, 5 and 6, and S. E. 1-4 of N. W. 1-4, Section 30, Township 63, 11 W. 591

U. S. LAND OFFICE,
Duluth, Minn., April 6, 1886.

Hearing ordered by Comsrs. "C" of Nov. 14, 1885, and day of same set by the Register and Receiver, for April 6th, 1886, at 10 A. M.

April 6, 1886. Case called. C. E. Shannon, representing White and Reynolds, responds for plaintiffs and R. P. Edson for defendants.

Defendant moved to dismiss on the ground that the matters set forth in the commissioners order for hearing are not matters which the Land Department properly has cognizance of, but on the contrary, are questions over which the Court alone has jurisdiction.

592 Motion overruled.

Defendant excepts to the ruling.

Plaintiff moves for continuance and supported motion by an affidavit of Fred Reynolds. Marked Ex. "A" and filed.

Motion overruled and case ordered to proceed.

April 7th, 1886.

On motion of defendant, Register and Receiv-
593 er ordered contestants to produce the original complaint or affidavit of Orillie Moreau, a copy of which is on file.

Attorneys for contestants reported that they were unable to produce the same at this date.

Attorneys for defendant thereupon objected to having the case proceeded with and moved to dismiss the hearing on the ground that the contestants refused to produce the said original complaint or affidavit.

594 At this juncture the Register and Receiver adjourned the case till April 8, 1886, 1 P. M., and telegraphed the Hon. Commissioner to ascertain if the original document alluded to was on file in the General Land Office.

April 8, 1886.

Hon. Commissioner answers that the affidavit of Orillie Moreau is on file in the General Land Office.

1 o'clock P. M., case called.

White and Reynolds, Attys. for contestant asks that the titles of the cause be so changed as to show that Angus McDonald is alone contestant, of the location and pretended entry under Sioux half-breed certificate No. 19 D., and that Orillie Stram is with other the defendant. 595

Held by the Register and Receiver that Orillie Stram, upon whose affidavit, with others, the order for hearing is based, has attacked the validity of the power of atty. and the location of the scrip and is by such action, one of the contestants of this location.

Plaintiff excepts to the ruling, and state that he appears only for McDonald.

Defendant's attorney objects to proceeding upon the copy of the affidavit of Orillie Stram 596
(Moreau) on the ground that the same is not a true copy thereof.

TESTIMONY.

James H. Power, being duly sworn on part of plaintiffs, says:

I live in Duluth, Minnesota. I am a scaler of 597
logs. In the month of June, 1883, between the 2nd and 24th thereof, I was in town 63, R. 11 W. I started there from Duluth to the best of my knowledge in the latter part of May, 1883, in company with Edward Byrne. No one else was with me going up there. After I got there Jos. Clement and Thos. Ross. The latter about two days, was with me. I went there to take up a homestead. In pursuance of this purpose I built a

shanty and partly finished it, and run the line around the location, established stakes at the different corners, writing on those stakes that that was Jas. Powers' homestead, and that was witnessed by the signature of Edward Byrne. Edward Byrne built a shanty and partly finished it and also cleared some land, run the boundary
598 line around his claim, established the corners and wrote thereon that that was his homestead and I witnessed it.

(Witness here shown a stake and upon examination of it said that he could not swear that the stake had ever been on the land in dispute. I cannot say that this is a stake from that land but the stakes were marked similar to this.

When asked if he knew the signature he said
599 that it was so defaced that he did not know it. There were marks put on both buildings on mine and marked "This is James Powers' homestead, taken up as such and such a time, I do not remember what time exactly, and witnessess by Edward Byrne, Jos. Clement and H. R. Harvey. On Byrnes' cabin was the similar notice witnessed by myself and the parties mentioned. The township at that time I understand was not surveyed. I have forgotten what section our lands were
600 in. I can't describe the location. I know where Hyde and McDonald now are and have been for the last year. They now have the same locations that Byrne and mine made, unless changed since the survey. I have not seen their improvements. I was there last about two years ago. At that time Hyde had started his shanty and McDonald had not to my knowledge.

McDonald's claim corresponded to mine and Hyde's to Burn's. I remained there about five

weeks when I made my improvements except 2 1-2 days, when I went to Vermillion. When I came away I left Byrne there. Byrne and I left the land both together, we also left the marks on the posts and buildings as they were. To the best of my knowledge we left the land the last week in June, 1883. When I left the improvements consisted of my claim, a house partly built and 601
enough cleared to get around and handle logs. On Byrne's the shanty was built and partly finished and about 1-4 of an acre cleared. I went on to the lands when Hyde and McDonald went there. I don't remember the date, but I think it was two years ago, about, this summer. There was not to my knowledge any other improvements on the land when they went there than there was when Byrne and I came away. When I was there making improvements there were Indians came there. 602
I think they were packer, they did not, to my knowledge make improvements. I made my improvements as a homestead. Mr. Byrne put the notice as regards his homestead on his shanty as soon as it was built. About three weeks before we came away. Mr. Eaton never was there when I was there, to my best knowledge, and no character there that I knew by the name of Orillie Stram. I was not in the employ of Mr. Eaton in making these improvements. I was in no one's 603
employ at that time. Joseph Clement stopped with us and worked along between us and also went to town when we would want him to. Thos. Ross helped to survey some lines. I think Mr. Eaton and Merritt employed him. To the best of my knowledge he was there three days; I helped Byrne to run my lines and all lines except what Ross run. To the best of my knowledge Ross did

not help run my lines but he helped Byrne run lines.

CROSS EXAMINED.

604 I made the Village of Duluth my home before I went up there. I had been a resident of Duluth two months. I had known Edward Byrne since I came to Duluth. I went up there at the suggestion of Edward Byrne. Edward Byrne suggested this land to me one afternoon and we started up the next morning. He told me (Byrne told me) there was a good thing on hand and asked me if I would go with him, he couldn't handle it all alone. I said I would consider the matter. That
605 is all he said to my knowledge. He never told me he was going up there to make improvements for F. W. Eaton. We were in Paddy Welch's saloon when he made the proposition. Thos. Ross was present at the conversation. I can't tell how many talks I had with him. I do not remember how many places we talked in. I talked with Jos. Clement, and Mr. Leonidas Merritt, (Eaton and Merritt) before I went up there. I went and asked Mr. Merritt his opinion. I said I was going
606 up there and he said he was glad I was going.

Q. Did you not tell Mr. Merritt at the time that Edward Byrne and you were going up there, that Byrne was to get one-third interest for making the improvements and that he was going to divide that one-third with you for going with him?

A. To my knowledge no such discourse ever passed between Merritt and myself.

Q. Did you not tell Merritt that Edward Byrne was going to divide his one-third interest he was going to get with yourself and Clement? A. No, I never told Merritt so.

Q. Will you swear positively that no such conversation ever passed between you and Merritt? A. I will, that I did not previous to my going on the land. 607

Q. Did such a conversation as that EVER occur between you and Leonidas Merritt? A. Yes, it was in Mr. Merritt's office in Duluth. I do not remember who was present. It seems to me someone came in the door but I did not turn around to see. Edward Byrne was not present to my knowledge. I don't recollect the date I went up there or when I came back. Byrnes paid my expenses, he gave me the money here in town. Mr. 608 Byrne did not describe the land to me or what the good thing was until we were half way up there. Byrne talked to me first about making a homestead. Nobody suggested to me to go to Merritt. I knew that Eaton & Merritt were in company when I went to see the latter. I don't know whether Byrne suggested anything about taking a homestead before going up there or whether it was after we got there. I had not made up my mind to anything in regard to the 609 matter until I had seen the land. I did not know what I was going to do about it when I left Duluth, if I found it worthless I was not going to take it as a homestead. I did not testify that Edward Byrne first suggested taking a homestead. I never filed on the land as a homestead. I never presented a filing for a homestead entry upon it. I never went to the Land Office to see if I could file a homestead or pre-emption and never made

any inquiries. We, Byrne and I left the land at the suggestion of Mr. Merritt. I had once filed a pre-emption before going up there. I was ignorant of the law and found out afterwards that I could not hold this land in 63, 11. I don't know what kind of a filing I had made previously to
610 going up there. Some one filed for me, all I know is that I relinquished it. I did not pay anything for it, and don't know if it was on surveyed or unsurveyed land. I can't tell when I went on the land with Hyde and McDonald. I went on there to locate them on this land. I took them up there about one year after Byrne and I came back from there. I got nothing for putting them on the land. I borrowed 20 dollars to do it with.

611 ———

Continuation of Cross-examination of James Power:

My full name is James Henry Power. I said yesterday that before I went up on the land in May, 1883, a man had used my name to file on land. I can't tell how long it was before I went up that this happened. I first discovered that this
612 man had done so soon after his doing. I was told by parties who seemed to know all about it that the land I was filed on was worthless and I never went near it. I found this out before I went up to 63, 11, with Byrne. I never signed my name to any paper of filing in the Land Office, but I think I signed a blank. A certain party came and asked me if I wanted to take a pre-emption. I said yes, but whether I filled the blank or not I don't remember. I don't know who filed it. I did not

know it was filed until some time after. The man was Mr. Grady.

Q. Did you not sign a filing paper in the U. S. Land Office in 1882, on which Angus McDonald was a witness? A. No, not in the U. S. Land Office.

Q. Did ever sign one anywhere which was witnessed by Angus McDonald or any one named McDonald? A. Not to my knowledge. 613

(Witness here shown a declaratory statement and acknowledged that he signed it). The paper was signed at Capt. Norris's. I never signed but one paper.

Defendant offered the declaratory statement in evidence marked Exhibit "B," and filed.

Q. How do you account for your testimony awhile back that somebody filed a D. S. without your knowledge or authority. A. It was filed without my knowledge. I was not present when it was filed. 614

Q. Did you direct the paper to be filed in the Land Office. A. No. I gave the paper to Mr. Grady after I signed it. I knew when I signed the paper that it was to pre-empt land.

Q. Did you sign the paper for fun or did you intend to pre-empt land when you signed it? A. I was not particular. The notices which Byrne and I put on our shanties were alike except as to names. One was that one claim was Byrne's homestead and the other was mine. I am as positive of this as regards my claim as I am of anything else I have testified to. 615

Q. Are you just as positive as regards Byrne's notice? A. I am positive that on Byrne's

shanty the notice stated that it was Byrne's homestead. The notice was written on one of the logs of the shanty near the door, on the front of the building. I know there was but one notice on my shanty, and to the best of my knowledge there was but one on Byrne's. There might have been more.

616 Q. Was not this the notice that was on Byrne's shanty "Edward Byrne (minutes of the land here) (settlement made or commenced or begun) settlement continued—" and nothing else? A. No, I never remember of seeing such a notice on that shanty. I remember when I went to Vermillion Lake after supplies. I got the supplies on an order from Byrne. I cannot recollect the amount of the order but as near as I can recollect
617 it was for pork, flour and other provisions in small quantities. It was not as much as a barrel of flour. I met Dick Fagan when I was returning with the supplies. I met him as I was going out to Vermillion Lake not over ten miles from Tower. I had a conversation with him about the land in contest.

Q. Did you tell him Eaton & Merritt were going to scrip that land? A. Not to my knowledge.

618 Q. Do you swear positively that you never told him such a thing. A. I do swear positively.

Q. When you returned to Duluth after leaving the land did you go to the office of Mendenhall & Haines with Byrnes? A. I was in that office with him. I went in first and Bryne went to change his clothes and then he came. Mr. Eaton, Merritt, Byrne, Clement and I were together. As near as I recollect a relinquishment was made out

for me to sign, *relinquishing the right to the improvements.* There were papers also made out giving me a 1-9 interest in said land. I don't remember whether it was a deed, or not. It was given me for to relinquish my right to what improvements I had on the land.

Q. Was it not given to pay you for your ser- 619
vices up there. A. No sir.

Q. Who gave you that deed. A. I understood it was Eaton & Merritt. I never saw the deed. I sold my 1-9 interest to Mr. Lonstorf of Milwaukee. (Witness here shown a paper and said that he signed it while in Mendenhall & Haines' office.) That is my signature and the paper is what I understood to be a relinquishment of my interest to the land.

620

Q. Was the paper read to you before you signed it? A. It was partly read to me.

Q. Do you read and write? A. Yes, sir.

Q. Take the paper and read what was read to you. A. I can't do it. I was under the influence of liquor at the time. I remember I went into the office before Byrne did distinctly. I then went out again and went to a saloon. Joseph Clement went with me. I don't know whether anyone else went with me or not. The saloon was 621
across the street from the office. I don't remember who I left in the office. I do not remember whether all the other parties except Byrne were in Mendenhall & Haines' office when I first went there or not. When I came from the land to Duluth, Mr. Merritt, Mr. Fagan, Mr. Clement, Mr. Byrne and others were with me, I think the place I went to was a saloon. Mr. Eaton & Clement I think were with me.

Q. Did you not go to Friedenberg's restaurant and get dinner the first place you went to. A. I remember of going to Friedenberg's and getting dinner, but do not remember whether that was the first place I went to or not. I know that the first thing I done was to take a drink.

622 Q. If you can't remember which part of that affidavit was read to you how are you able to state that but part of it was read to you? A. Because I don't remember the words "duly sworn." There may be more but this is impressed upon my memory.

Q. Now I want you to state whether the paper you claim was a relinquishment was entirely read over to you. A. I don't know.

623 Q. What paper was that was half read to you? A. The paper I put my signature to?

Q. Did you put your signature to more than one paper? A. Not to my knowledge.

Q. Was the one you put your signature to read over to you? A. I don't remember.

Q. Did you sign that paper before you left the office and went to the saloon? A. I went out to take a drink before I signed the paper.

624 Q. Your recollection then I perceive from the evidence is clearly distinct in regard to everything you did except what transpired in relation to these papers. A. No.

Q. Was you sworn to any paper in Mr. Haines' office? A. Not to my knowledge.

Q. Was the paper signed by you signed before the deeds were made out or after.

A. I don't remember.

Q. Did not Mr. Eaton after the deed to you, Byrne and Clement had been made out and passed to you, state that he wanted an affidavit from the men that made the improvements showing for what purpose they were made and for whom they were made? A. I don't remember such a proposition. 625

Q. Did not Mr. Haines write the paper that you signed in your presence and read it over after he made it to you before you signed it? A. All that makes me think he did not is that I do not remember the words "Duly sworn" there were certain papers read to me that I did not then and do not know now what they contained. I mean that they were read or partly read.

Q. Do you understand English when it is read to you? A. I do. 626

Q. Why is it that you did not know at the time what those papers contained.

A. Because I drank too much which I must admit to my shame.

Q. Who advised you to inject this drunken business into this testimony today? A. Nobody. (Same affidavit shown witness and he asked to read it over, he did so and was then asked whether the contents were true or false, and answered with emphasis that they were false. 627

Q. Do you know what kind of liquor you drank that day? A. Beer and whiskey.

Q. How many drinks does it take to get you drunk so you don't remember what you were doing? A. Circumstances alter cases.

Q. How much did you drink that day? A. I don't remember. After I got to town I drank in only two places before signing these papers.

Q. How long after you came to town was it before the business was closed with regard to these papers. A. I don't remember but it was the same day. (Affidavit referred to now offered in evidence marked Exhibit "C" and filed).

Witness now shown another affidavit purport-
628 ing to be signed by him—says: The signature is mine. I swore to that affidavit and remember the words "duly sworn" in it. I made it of my own free will.

Q. Who requested you to make this affidavit? A. Mr. White, and I made it in his office in Duluth.

Q. Did either one of the contestants ask you to make the affidavit. A. I don't think they did.

629 Q. Who got you to go and make it? A. I went of my own free will.

Q. What was your object in making it? A. Mr. White asked me some questions whether I had made any improvements on the land under any one's instruction or supervision, and I said no; which was true. He asked me if I would make affidavit to that effect and I said yes.

Q. Was you under the influence of liquor at that time? A. Not to my knowledge. No. I was
630 sober. I have examined the signature to this affidavit and the one to the other shown me this morning.

Q. Did you see anything in those signatures that indicated on the formation of the letters that you were any more intoxicated when you signed the one that you were when you signed the other. A. Yes, I see indications here in this one (Exhibit "C") that I was intoxicated when I signed.

Q. What is it you see? A. I see by the formation of the letters of the first name. I never write it so unless laboring under some temporary excitement. I think the signature to this last affidavit looks the most sober of the two. Affidavit referred to marked Exhibit "D" and offered in evidence by defendant's attorney for the purpose of showing that witness committed perjury in one or the other of the affidavits.) 631

Q. Previous to making this last affidavit how much had you received from Mr. Lonstorf for your interest in this land.

(Objected to by plaintiff's attorney on the ground that it is irrevelant.) Witness called upon by the Register and Receiver to answer the question. 632

A. I got seven hundred and fifty dollars in all. I took the money and did not care what became of him. It was immaterial to me. I had taken advice on the legality of the entry. I don't remember whether I took the advice before or after selling to Lonstorf. No one ever said the entry was illegal before I go my deed from Orillie Stram.

Q. Notwithstanding the fact that you got $750 out of Lonstorf for your interest in the land you voluntarily of your own free will and accord went to White's office (White & Bower) and made this affidavit. 633

A. Yes, I made it at White's request.

Q. How much did you get for it? A. Not a nickel, no money, no promise.

Q. You even borrowed money and gave your note for it, to go and put Hyde and McDonald on this land, did you? A. Yes, sir, and I haven't

paid the note yet, but calculate to when it is presented.

Q. Who did you borrow it of?

(Not answered.)

Q. Now don't you think you played an almighty mean caper on Lonstorf in making this
634 affidavit, and putting the contestants on the land wthout any compensation whatever? A. My answer to that is that he took his own chances.

Q. How much of this land do you expect to get if this land is made vacant? A. None.

Q. How much compensation are you to receive for coming here to testify? A. There has been no stipulated price agreed upon—but I expect pay certainly.

635 Q. Did you make the last deed after you put contestants on the land? A. I do not remember.

Q. Did you not charge Lonstorf fifty dollars for making a new deed to correct the old one? A. I told you I received $750 in all.

Q. It is not a fact that after you placed the contestants on this land you charged Lonstorf $50 for making a new deed to correct the error in the first.? A. I do not remember.

636 Q. When did you put contestants on this claim? A. In the year 1884, in the summer, the fore part of the summer to the best of my knowledge.

Q. Did you talk with Lonstorf about your improvements at the time you made the first deed? A. Not to my knowledge.

Q. Did you not tell him that you got a 1-9 interest from Mrs. Stram for making the improve-

ments for her on this land. A. I never mentioned Mrs. Stram's name.

Q. Did you not tell him that you make the improvements with Byrne for Eaton & Merritt? A. No, sir.

637

RE-DIRECT.

Q. In your cross-examination you state that you came away from the land at the suggestion of Mr. Merritt. Give us the full details of that suggestion, where the conversation took place and when it was? A. I had no conversation with Mr. Merritt and he said nothing to me about it, not to my knowledge—except that Mr. Merritt 638
told me up there that I was wealthy. I never made any change with Merritt whereby I was to let him scrip the land. I made an agreement with Merritt whereby I was to let him scrip the land. I made an agreement with Mr. Merritt through Mr. Byrne afterwards, this was on Fall Lake, I think, about 1-4 of a mile from the land just as we were starting down to Duluth. Mr. Byrne told me we would get 1-3 for our relinquishment. I made no reply as I was satisfied I could not do better. 639
There were certain circumstances which prevented me. This was the first that was said where any amount was agreed upon.

Previous to this Fagan had talked to me. Fagan & Merritt came there together the Saturday before we left. Fagan said would I be satisfied for them to scrip the land. I told him that I had heard that other parties had scripped it. And he said that it was not so, and I told him

then that I took it up as a homestead and wanted something out of it. He said that I held the pre-emption and could not hold a homestead, and said that it was his intention to expose me if I did not agree to their terms. He said I would be dealt square with and that was all that was said. This
640 was before Fagan and Merritt came up together, about a week before to the best of my knowledge.

Defendant moves to strike out all the evidence relative to the conversation between Fagan & Power on the ground that Mr. Fagan had no authority to represent Eaton or Mrs. Stram. When Fagan & Merritt came there together, they looked over the land. Stopped over night, and started for Duluth on Sunday morning.

641 ———

April 10, 1886.

Re-direct examination of James Power continued.

I knew Fagan before this. I understood him to be in the employ of Eaton & Merritt. I had heard that from Lon Merritt. Mr. Merritt said in my presence that Fagan must be a pretty good
642 man as he (Merritt) paid him such and such a salary by the year. When Mr. Fagan came there a week before he and Merritt came together he said he was sent there by Eaton & Merritt. I was not on the land when Fagan was there the first time. I met him coming away as I was going on the land from my trip to Vermillion. I was not away over three days. About a week later Fagan and Merritt came on the land together. While Byrne and I were on the land making improve-

ments Mr. Lonstorf, Mr. Harvey, Mr. Parrault, Mr. Hartmann and others whose names I do not know were on the land, and at the time they were there the marks were on the shanty and plain to be seen.

643

RE-CROSS.

At the time Fagan & Merritt came up there Mr. Byrne, Mr. Clement and I and I think one Indian packer were there.

Q. Did you sit down at the door of the shanty with these parties and talk until late at night? A. I had no time piece and don't know how late it was, but we sat there talking.

644 Q. Did you not talk over just what the object was in being there and the whole arrangement? A. No sir, not to my knowledge.

Q. Was that not on Saturday, June 23, 1883? A. It was on Saturday, but I don't remember the date.

Q. Was not the interest that Mr. Byrne was to have for making the improvements talked over at that time? A. Not in my presence.

645 Q. Was not the interest also that you were to receive from Mr. Byrne for assisting him also talked over at that sitting? A. Not in that light.

Q. Did you not state at that sitting that that was just as you understood it before you went up there and that you were satisfied or words to that effect? A. No sir. I never slept in the shanty over night—that I put up there.

Q. Did you not sleep in the shanty that you claim was put up by Byrne for a homestead? A.

Yes, I did sleep in that shanty. We had a tent pitched within the walls of the shanty. The tent was never pitched on my land.

Q. Did you ever pay Byrne anything for the minutes of your alleged claim? A. I never paid him anything or never promised to pay him any-
646 thing. I never was asked anything for the minutes. I have received money from Byrnes. I never paid Byrnes anything for supplies nor promised to. I never was asked to pay him for them. I refunded the money I got from Byrne before going up there. I knew when I went up there that I had filed a pre-emption but was not positive of it.

Q. How long after you came down here and received your deed of your 1-3 interest with Byrne and Clement was it before you discovered that the
647 affidavit you signed in Haines' office was false? A. I never knew that I made an affidavit in Mr. Haines' office until I saw it in this trial.

Q. Did you not see a copy of it while you were in jail? A. I did.

Q. Do you now still insist that the contents of the affidavit made by you, Byrne and Clement in Haines' office were false? A. I do.

Q. Did Clement help build your shanty? A.
648 Yes, sir.

Q. Did you ever pay or promise to pay him anything for his help? A. Yes sir.

Q. How much and when? A. There was no stipulation made. I was to give him an interest in the land. Clement and I had an understanding that whatever I got out of the land I was to give him half of. We understood I was to make a homestead.

Q. Was this understood before you made them improvements? A. It was understood in the act of making the improvements.

Q. Did you have an understanding with Byrne to give him something also? A. I did not.

Q. He helped you did he not? A. Yes. 649

Q. Why did you not give him something also? A. He had a homestead himself and I helped him

Q. Why did not Clement also take one? A. I ain't prepared to say. I don't know where Clement is now.

650

RE-DIRECT.

When we were talking that Saturday night by the shanty as I have before spoken of there was nothing said in my presence about the interest I was to get for helping make the improvements, but Byrne took me one side and told me we would get a one-third interest in the land if we would relinquish, or words to that effect. I made 651 no response to that that I remember of. And left the land the next morning. I really believe it was Sunday morning that Byrne told me this and we started for Duluth the same morning. After that talk I done no more improvements on the land that year. (Witness here shown Exhibit "B" and states that he did not fill in the body of it. That it was blank when he signed his name to it.

RE-CROSS.

I don't remember whether Dick Fagan was present when I signed the paper. I am positive it was blank when I signed it. The morning that Byrne called me one side was just before we left the land to come to Duluth and told me we would
652 get 1-3 interest in the land was the first time I ever heard that I was to get a specified interest therein.

Q. You wish then to be understood that you were with these parties all the night before, had made your arrangements to leave and come to Duluth, without knowing what your interest was to be until just as you were starting away? A. I had made no arrangements to leave the land.

653 Q. When did you make arrangements to leave the land? A. I never made any arrangements to leave the land. The rest went away and I had to go or stay there and starve. If I were speaking of actual labor I would say that it did not take me more than a day to build the shanty on my land. A day to roof it and a day to cut a hole for a door. Three days altogether. That is, it could be done in that time, although I was three weeks at it, because I was not at it steady and
654 some days did not work at it at all. Mr. Clement helped me at times, for which I agreed to give him one-half of what I got out of the land. It was a mutual understanding between Byrne, Clement and myself that we were to have an equal interest in the proceeds of what we would receive from the land, we had that understanding before we left town to go up there on the land and also talked it over several times after we got up there. Clement was a witness to both our notices on the

land. When we came from the land to Duluth to make out the papers I had been drinking before we got to town. I took drinks at the junction (Northern Pacific Junction about 27 miles from Duluth) and we came from there on the train. At the junction I drank with Jos. Clement and another party whose name I did not know. I remember of taking three drinks there. The friend of mine whose name I do not remember paid for the drinks. 655

This testimony was carefully read over to the witness after which he subscribed his name thereto.

JAMES H. POWER.

After reading the testimony to witness he was duly sworn this 10th day of April, 1886, before me. 656

R. N. MARBLE,
Register.

April 12th, 1886.

Thomas W. Hyde being duly sworn in his own behalf, as contestant, says: 657

I am one of the contestants on what is known as scrip 19 E. Have been on the land since 20 August, 1884, except at brief intervals when I went there I found a shanty 12x14 feet, half roofed with tamarack and birch bark. It was not mossed and no door hung and no glass in the window, although there was a hole cut for a window. It was not nor never had been inhabitable in my opinion. There was a small clearing on

it, also. There were marks on the shanty. Byrnes came as a homestead was there. The names of Jas. Power, Harvey & Perrault, and Hartmann was also on it. There was also other writing which I could not make out. This was written in pencil, all of it. This shanty is 40 or 50 feet from where
658 I made my improvements. I have built a house. Mossed it, put a floor, door and window in it and cleared two acres of land and put a scoop roof on the shanty. These imprvements are on the N. E. 4 of S. W. 4 of Section 30. There is about 1-4 acre clearing on the S. E. 1-4 of N. W. 1-4 of same section by me.

659

CROSS-EXAMINATION.

Q. Who first suggested to you about going on that land? A. I had a talk with James H. Power. I was around Duluth here when I had the talk. This was a couple of weeks I suppose before I went up there. I could'nt just say whether he spoke first or whether I did. I had not talked with Mr. White before I had with Mr. Power.

Q. Did you suggest to Power to go up to
660 White's office and make affidavit, Exhibit "D."? A. I had a talk with him. About it and he claimed he could make the affidavit.

A. I did not make any arrangement with him to give him interest in the land at any date.

A. He was not to have any interest.

A. Powers put me on the land.

A. I paid him nothing for putting me on the land.

A. I did not agree to allow him anything at that time but agreed to allow him for what time he lost in case we succeeded in getting the land.

A. McDonald and I paid his fare down on the boat and up on the train.

Q. Then when he testified that he borrowed the money ($20) and gave his note for it to pay his 661
expenses down there he testified to an untruth did he? A. We paid his fare on the boat and on the train, but what his outside expenses were I know nothing about. I know nothing about his borrowing the money, or giving the note.

Q. Did you have any contract with Mr. White in writing or otherwise, by which he was to receive any compensation or interest in the land? A. Yes, there was a contract. 662

Q. Where is it? A. I don't know.

Q. When and where did you last see it? A. I have not seen it since it was last drawn up by Mr. White.

Q. What did it contain? A. It contained that when I proved up on the land I was to secure him a one-half interest.

Q. Who witnessed the contract? A. Powers, McDonald and myself and Mr. White were 663
there together, that is all I recollect. I can't say whether Power witnessed it or not.

A. The last I knew of the contract Mr. White had it.

A. Mr. Power was not included in the contract with McDonald, Hyde (myself) and White.

A. I did not find as much as a quarter of an acre cleared on the land when I went there

A. I found a shanty which did not have the appearance of having been lived in. It had no fire place or stove.

A. I directed myself to make the improvements, which I made. I was to get money from Mr. White when I needed it to pay my expenses.

664 THOMAS W. HYDE.

Subscribed and sworn to before me this 12th day of April, 1886.

R. N. MARBLE,
Register.

Angus McDonald, being duly sworn on his own
665 behalf, says:

I reside in Lake County, Minn., Sec. 30, T. 63, R. 11 W. I have lived there since August, 1884. Before that I resided in Duluth, Minn. I am on what land Powers says he made improvements on. When I went there I found a house 12x14 feet 1 1-2 stories high, covered with bark, with a door in it, floor, no windows, there was a bunk in it. There was a little clearing about one hundred feet square. There was marks upon the house.
666 It has Powers' name on and said it was a homestead. I remember only one other name and that was Harvey. I have gone on since and made a clearing and built a house on it. I live in the house I built myself. I have also been over on the other claim where Hyde is. When I went there I found a shanty same size as that found on the claim I am on. It was partly covered with bark. The door was made but not hung. There was a hole cut for a window but no window. There

were also marks on this shanty. I saw the name of Edward Byrne on it. I found stakes around. (Witness here shown a stake and identified it as one he saw cut, and stated that it was on the range line between R. 11 and 12, and sections 13 and 25.) (This was the same stake shown Power.)

667

Attorney for plaintiff here offered stake in evidence. Attorney for defendant objects to it as being incompetent for any purpose, and also that there is nothing in evidence to show that defendant ever used the stake or marked it.

EXAMINATION CONTINUED.

This stake was found on the west line of Hyde's claim. I saw three or four other stakes around the claim, but did not notice whether they were marked or not.

668

Witness here shown Exhibit "B" (a declaratory statement purporting to be witnessed by him) and when asked if he signed the name McDonaid which appears as a witness states that he never signed it.

669

CROSS EXAMINATION.

I first learned of this claim in August, 1884. Jas H. Power first informed me of it. He was the party I first talked with about it. He wanted me to go with him to White & Bowers' office. I had been around town with him before that. He spoke about this claim first. He put me on the claim. Mr. White (White & Bower) has furnished the supplies to keep me on this claim. I am

making the improvements for myself. I don't know of any one being interested in this claim except myself. Judge White has no interest in it. There is an understanding that he is to have an interest in it if we succeed in this trial. He is to have a 1-2 interest. I know R. D. Mallett. He has
670 no interest in the claim. He is not going to have any. The arrangement with Hyde is same as mine. White is to have half if we succeed in this. James H. Power is also to have an interest in it if we succeed. I don't know how much he is to get. I agreed to give him an interest if we succeeded in getting the land. Mr. Hyde went after Power to come and testify in this case. I never had any talk with Mallett about the claim. Mr. White is paying the expenses of the claim with the under-
671 standing that he is to have 1-2 of it after we secure it. The expense so far has been about $300. I have given Mr. White notes for amounts advanced. I give him the notes so that if I don't get the land I would have to pay them. He has also furnished me money to go up and down with to the land and back. He pays me when I ask for it. I am not hired by the month. I had not talked with anybody besides Power.

672

RE-DIRECT.

Q. This half interest you speak of that Mr. White is to have was it to be a deed of, or a security upon a half of the land for advances and services? A. It was a security.

Q. This interest you have spoken of as to Mr. Power and which you say you cannot fix

the amount it, why was that, was it not simply that he was to be paid for his time and services and there was no telling how much time he would have to put in it? A. He was to be paid for his time. That is all I mean by an interest he was to have.

673

CROSS EXAMINED.

I am to let him have an interest in the land when I get it to pay him for his time and services. The contract I have with Mr. White for his 1-2 is in writing.

Q. When you get this land is it not the understanding between you and Mr. White that you 674
are to deed to him an undivided one-half interest in it? A. No, sir, we never mentioned a deed.

Q. What did you mean then by saying that White is to have 1-2 interest? A. To secure him for advances.

Q. Then if it was to secure advances made how can you give him a half interest unless you deed him one-half? A. I could not very well.

Q. Then of course your understanding is that 675
you are to deed him one-half, isn't it?

Question objected to on the ground that it is argumentative. That the witness has already said and explained that he is to give security upon one-half and that he is not to deed one-half; and that not being a lawyer he is not expected to explain to a lawyer the distinction between a security and a conveyance.

A. No. That is not my understanding.

Q. Really you do not know anything about it, do you? A. I know my own transaction about it, but I don't know White's.

Defendant now asks that plaintiff's attorney Mr. White, produce the contract which witness says he has signed. Mr. White states that he has
676 looked in vain for it lately and if he can find it he will produce it.

Q. Did you not understand at the time you went up on White's office with Power, from what he, Power, told you, that he had been talking with White about it before that. A. Yes.

Q. Was it not a part of the services Power was to render that he was to come here and testify in this case. A. No.

Q. Was it not the understanding that he was
677 to put you on the land and help you by testifying in this case? A. If he was called for. Yes.

ANGUS McDONALD.

Sworn and subscribed to before me this 10th day of April, 1886.

R. N. MARBLE,
Register.

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678 George R. Stuntz, sworn for plaintiff, says:

I am county surveyor of St. Louis Co. I have here the record of the survey of Section 30, T. 63, R. 11 W. It was made by my deputy, Mr. McPherson, but was not made for the government. It was made by the request of parties interested. It was made Oct. 17, 1885.

Defendant offers objection to the evidence because it appears that the survey was made sub-

sequent to the making of the improvement on the land. Also for the further reason that this survey or a government survey does not effect a location made in good faith by Sioux half-breed scrip and located by metes and bounds before the survey and where no settlement is required by the scripee. 679

EXAMINATION CONTINUED.

Inside lines of a section are not made by the government. My deputy is a competent surveyor. The two buildings now on the sketch are according to my survey, and are on N. E. 1-4 of S. W. 1-4 of Sec. 30. Copy of the plat of survey offered in evidence.

(Objected to as incompetent.) 680

The sketch of survey offered in evidence by plaintiff objected to because the surveyor claims to have surveyed out Sec. 30, whereas from his report it appears that he had run only the center line which is not an east and west line, but according to the record is run at an angle of S. 86 degrees 17 minutes W.

It is understood that defendant shall call Mr. Stuntz for cross examination hereafter before the close of the case if desired. 681

GEORGE R. STUNTZ.

Subscribed and sworn to before me this 10th day of April, 1886.

R. N. MARBLE,
Register.

Jewett McPherson, sworn, says:

I reside in Duluth, Minnesota. I am deputy surveyor. I made a survey of one mile of line and a fraction over of Sec. 30, T. 63, R. 11. Exhibit "E." represents the work I did. I established a quarter line east and west through the section.

682 (Testimony of witness objected to for the same reason as that of Mr. Stuntz.)

I found the two houses shown on this plat. I could not say what subdivision of the section they are on. They are south of the center line of the section east and west line through, and west of the center line north and south through the section. They are situated as shown by the records kept in the county record book of the county surveyor. Which I have read over and sworn
683 to once and know is correct. I was appointed and sworn as deputy surveyor, took a government survey chain, and got Angus McDonald and another man to go with me. I had them sworn, and we made the survey. As a result I am satisfied we made the survey correct.

684

CROSS EXAMINED.

Mr. McDonald was the first man that spoke to me about the survey. Mr. White guaranteed my pay. The government establishes the corner and quarter section posts of a survey.

Q. In making that survey did you discover any error made by the government survey of the section in the establishing of corners or quarters?

(Objected to on the ground that the original government *surveys whether right or wrong are* those by which all subsequent conveyances are governed and controlled.

A. I did. I went to the west side of the section, to the quarter post. I had the U. S. record to see if that post and bearings were correct and found they were. I then set up my solar and found my latitude, thence ran east through the center of the section as I supposed. At 93 chains and 26 links I intersected the east line of the section. I intersected 6 chains and 20 links south of the 1-4 post on the east side as shown by the U. S. survey. I then went to the quarter post and ran south 86 degrees 17 minutes W., proved that the line I had run from east to west was a direct east and west line. I found the 1-4 post on the east line 24 rods and 8-10 north of where I expected to find it. I ran a due east line. I found the 1-4 post on the west side correct, but the 1-4 post on the east was 6 chains and 20 links north of where it ought to be. If the line had been carried correct it would have brought the improvements south of the line some 50 or 100 links. 685 686

J. McPHERSON.

Subscribed and sworn to before me this 10th day of April, 1886. 687

R. N. MARBLE,
Register.

Emil Hartmann being duly sworn on the part of contestant, testifies as follows:

I reside here in Duluth. I am a civil engineer and land explorer. I have been on Sec. 30, T. 63,

R. 11 W. I was there in May and June, 1883, in June 1883 I saw Power, Byrne *and Clement* on that section. They were building shanties. There was a log on Byrne's shanty which served as a sort of hotel register and every one that came there signed his name on it. There was also written on it "Homestead entry of Edward Byrne.
688 Settlement made in May sometime, and the lines of the claim drawn. Byrne was there and he explained it to me. He only just showed me which 40s he had taken, as was shown by the lines on the log. I was there also in 1884 and 1885, I saw these same marks after Byrne had left there. I was there twice after Hyde went there. I think there were no marks there then on Byrne's shanty. The marks on Byrne's shanty were made with a
689 pencil.

CROSS EXAMINATION.

When I went there in June, 1883, I had a talk with Byrne relative to his object in being there. He did not tell me Eaton & Merritt was going to scrip the land, I thought Lornstorf was going to scrip it. I told Byrne I had come up there and that I wanted to scrip the land. On Satur-
690 day morning before Lon Merritt came there Byrne said if some one don't come by this evening we will deal with you. I made no memorandum of anything on the building and did not sign my name on it. I would not pretend to say that I could tell every word that was written on the shanty without a memorandum.

RE-DIRECT.

The word homestead was on the poles or stakes and also on the shanty and if it was not understood that Byrne claimed it as a homestead some one else would have had a homestead on it.

EMIL HARTMANN.

691 Subscribed and sworn to before me this 10th day of April, 1886.

April 14, 1886.

S. F. White, being sworn, deposes and says:

692 I am one of the attorneys for the contestants. I have made careful search through my safe and among all for the contract of security given to me by the contestants in these cases to secure me for advances and legal services and am unable to find it. I supposed until about two or three days before the day set for the hearing that it was in the files of the cause at my office, but looked through that and could not find it and then made a careful search through my safe and among all papers where I thought it could be and have continued 693 that search at various times since up to this morning when I made a final last search through my safe and am unable to find it and have no idea where it is.

SHUABEL F. WHITE.

Subscribed and sworn to before me this 14th day of April, 1886.

R. N. MARBLE,
Register.

TESTIMONY ON THE PART OF THE DEFENSE.

Frank W. Eaton, duly sworn, says:

I am one of the parties defendant in this case. I know the description and location of the land in
694 contest. I had something to do with the improvements on said land. I was the duly appointed attorney in fact for Orillie Moreau—Stram—and authorized the making of the improvements for the purpose of locating the scrip in question under the rules of the Land Department. (Witness here shown the files in S. H. B. scrip, 19 D., and identified the scrip certificate and power to locate as the authority under which he proceeded in having the improvements made upon the land prepar-
695 atory to locating the same.) Also identified his own affidavit of the fact of the improvements having been made. Files offered in evidence and marked Exhibit "F" and filed. Witness then shown the files in scrip No. 19 E., and made a like identification. Files offered in evidence marked Exhibit "G" and filed. In having these improvements made upon the land in question I had no other purpose in view but the location of scrip by virtue of the power of attorney. I made the im-
696 provements in good faith solely in pursuance of the powers of attorney for the purpose of securing the location of the scrip in proper form and manner. At the time I caused the improvements to be made the land was unsurveyed and I had no knowledge of it except that it was vacant, unoccupied and unclaimed land by any other persons. I employed Edward Byrne to go and make the improvements upon the land in the first and I subsequently employed Richard Fagan al-

so to go up there. I agreed with Edward Byrne that in consideration of the land proving valuable as he represented to me and in consideration of his erecting or causing to be erected for me valuable improvements on two locations of 160 acres each, that I would pay his expenses necessarily incurred in doing 697
the work, that I would locate the scrip upon the land and as soon thereafter as the location was completed I would cause to be conveyed to him an undivided one-third interest in the land.

To the best of my knowledge Mr. Byrne fulfilled his part of the agreement. I also fulfilled mine. At the time I made the contract with Byrne I knew nothing about James Power or Joseph Clement. I don't think Thomas Ross did anything. I am informed that he went upon the land but 698
do not know what he did. I was present when Byrne, Powers and Clement returned from the land and saw them at the office of Chas. R. Haines (Mendenhall & Haines). Witness here shown Exhibit "C" and identified it. I was present when that affidavit was made. It was read over to Mr. Power. The subject matter of it was talked over with him and the whole affidavit was dictated by me in Mr. Powers presence. It was made after the deed was executed conveying Byrne, 699
Power and Clement 1-3 interest in the land. The circumstances under which the affidavit was made and dictated are as follows: I did not know at that time how much proof was necessary to establish the fact that I had caused improvements to be made on the land, and I thought it necessary that Byrne, Power and Clement should furnish additional proof and for that reason I had this affidavit executed by them to furnish the de-

partment in case more evidence was required. At the time this affidavit was made Mr. Power was sober, and fully understood the contents of it. It was read over to him and explained to him thoroughly. I have papers from Mrs. Stram confirming all my acts as her attorney and also the
700 acts of Leonidas Merritt.

Witness here produced the papers alluded to. Offered in evidence by defendant. Marked Exhibit H. and filed.

Edward Byrne was the explorer who first discovered the lands, and he came to me and told me of them.

701

CROSS EXAMINATION.

I was never on those lands. I first saw Orillie Stram March 31st, 1886. I first saw the scrip papers in Duluth, Minn., some time in the last of May or first of June, 1883, soon after the powers were executed. They were sent here to me and I never had seen them before, I think they were sent by mail. I got them from Byron M. Smith,
702 Minneapolis, Minn.

Q. Then you located these pieces of scrip for the purpose through them of obtaining title to the lands they should cover yourself? A. My intention was to have an interest in it. I did not expect to have the whole.

Q. Who else did you expect to have an interest. A. Mr. Merritt, Mr. Fagan and Mr. Byrne that is all.

Q. You did not expect Mrs. Stram to have any interest in it then? A. No, I did not expect her to have any interest in the land, although she might.

Q. You considered then did you not, that by purchasing the scrip you would obtain all the title to the lands to be located under it, and the scripee named in the scrip, would have no interest in the land and you made the arrangements for the improvements under that supposition did you not? 703

Objected together with all this evidence relative to title for the reason that the scrip patent is issued to the scripee. That Frank W. Eaton was only empowered to locate the same and that by the location of the scrip the title became vested in the scripee and it is wholly immaterial what Mr. Eaton may have expected with regard to the purchase of the land as that was a subsequent consideration and no title could pass in any event without the execution of a deed by Orillie Stram or her duly authorized attorney in fact. 704

Defendant also moves to strike out all the testimony as to what Eaton's intentions were as to what interest he and others expected to get in the property. 705

Question by the Register:

Q. Did you not know at this time that Mr. Merritt was empowered by letters of attorney to sell and convey the land and were you not acting with him jointly in the premises? A. Yes. Mr. Merritt was empowered by letters of attorney to time.

Answer to question previous to last:

A. I made the improvements under the supposition that when he conveyed to me her scrip and power of attorney to locate the same for a valuable consideration and the further contract on her part for a valuable consideration to fully confirm all my acts and also the acts of Leonidas
706 Merritt, her attorney in fact, for the purpose of conveying the lands located under and by virtue of said half-breed scrip that all her rights to any land as far as she was concerned was thereby transferred.

Q. Transferred to whom? A. To whoever her attorney in fact might desire.

Q. You had all these papers that you mentioned in next to your last answer, and Eaton & Merritt had paid the full consideration therefor
707 before the 16th day of June, 1883? A. No sir.

Q. What of those papers did you not have? A. We had the power to locate and convey prior to that time, but we had not fully paid for them.

Q. Who did pay you? A. I made the first payment to Byron M. Smith, and paid the balance to Orillie Stram March 14, 1886. I made no payment to her until then. I had agreed to pay her previous to that time. I made the agreement at
708 the time the powers were obtained by Byron M. Smith.

Q. Did you know at the time this land was conveyed by Merritt (Mrs. Stram's attorney) that Smith had made any such arrangement on her behalf? A. I have already answered the question in answer to the last question before this.

Q. Did you make that arrangement yourself with Mrs. Stram at the time the powers of attorney

were given or did somebody else act for you in making that arrangement.

(Objected to as immaterial.)

A. Byron M. Smith was acting for me supposing that he had full authority. He acted for me and for her. He held her scrip and got new powers of attorney and made the arrangement. I 709
knew of this arrangement at the time we procured the scrip.

Q. That is then, your arrangement was with Smith that you should pay him a certain sum which you did pay for the scrip and a certain other sum which you paid finally March 31, 1886, to Orillie Stram.

(Objected to as incompetent.)

A. Yes. 710

Q. When was you to pay that sum to Mrs. Stram under the original arrangement? A. After the location was perfected and the scrip adjusted.

Q. Were names filled in those powers of attorney when you received them or did you fill them in after you received them?

(Objected to as immaterial.)

A. They were filled in after I received them.

Q. Was the amount to be paid to Mrs. Stram 711
under your arrangement with Smith dependent in any manner upon the value of the land obtained or was it a fixed amount?

Objected to as immaterial.

A. There was a fixed amount between Mr. Smith and myself.

Q. Was Mrs. Stram ever on the land or not, to your knowledge?

Objected to as incompetent.

A. I don't know anything about it.

Q. Mr. Eaton will you explain why you made oath in this affidavit that has been offered here that you had as attorney build upon each of said pieces of land a dwelling house 14x16 feet, 1-story
712 high, built of timber and covered with split shingles with door and windows and had cleared ready for cultivation 1-2 acre of said land and that said improvements were made under the personal direction of said Orillie Stram, and for her personal use and benefit when according to your own testimony you never had seen Orillie Stram and never had been on those lands? A. Because it was true to the best of my information.

713 Q. You did not make these affidavits on information and belief did you? A. Only that portion relative to the improvements on information and belief. As to the other I was acting as the authorized attorney of Stram under a power of attorney and my acts were her acts, and you cannot separate the attorney and principal. And the improvements were made by Byrne and Mr. Fagan directly in my employ and the improvements were such as Mr. Fagan reported to me which state-
714 ment of his I then believed to be true. I had only such knowledge in relation to improvements as I have stated. The men came down from the woods the same day as the deeds to Byrne, Clement and Power were executed.

Q. That is July 2, 1883, if the date on the deed is correct? A. Yes.

Q. How long would it take parties to come down? A. From 3 days to two weeks, according

to weather and other circumstances. I don't know how long it took them.

Q. Had Fagan been to those lands for you more than once before they all came down? A. That was his second trip when they all came down.

Q. Did you have this scrip when you first made arrangements with Byrne to scrip the lands? 715
A. I did not have the scrip at that time.

Q. At what time did you make the arrangement with Byrne? A. Some time the last of May, 1883, we first talked it over. I made a definite arrangement as far as he was concerned at that time. He went up to the lands the next day I think.

Q. Both the powers, to you and Merritt were received by you in blank, were they? A. They 716
were.

RE-DIRECT.

Q. Was Power sworn to the affidavit, Exhibit "C," in your presence. A. Yes, he was DULY SWORN. The power to locate was filled out by Luther Mendenhall, and in the power to 717
convey Mr. Merritt's name was filled in by Byron M. Smith, a few days after I received it.

CROSS EXAMINED.

Power was sworn with his hand uplifted simultaneously with Byrne and Clement. I know this

by seeing him in the act. Power was in the office all the time during the time the affidavit was being prepared.

Question by Register:

Q. How long a time were you all in Mendenhall & Haines' office that day? A. I should say
718 about two hours.

FRANK W. EATON.

Subscribed and sworn to this 14th day of April, 1886.

R. N. MARBLE,
Register.

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719 April 15th, 1886.

Edward Byrne, being duly sworn, says, I am forty years of age and reside in Duluth, Minn. Have lived there about 6 1-2 years. I am an explorer. I know the property that is in controversy in this case. I discovered the property myself. I know Frank W. Eaton of Duluth, Minn. Have known him about 6 years. I made improvements upon the land in dispute. I built one house 14x16 feet, with a floor and roof, door and window, bunk
720 and table, and another house similar in size to the first house built nearly the same as the first except that it had no window, although a space was cut out for one. I also cleared 1-2 an acre of land. I heard the testimony of Hyde and McDonald. They were mistaken as to there being but half a roof on the shanty, at least as they stood when I left them after building them. There might, however, have been a half roof when they went there a year or so after they were built. The house

as I left it WAS inhabitable. Considering the time of year there was no stove in it and none was required, that is there was no fireplace or chimney as none was required at that time a year. Heating in that part of the country is done with fireplaces. There WAS a door hung in the doorway of the shanty with leather straps when I left. 721
Doors and windows of shanties are commonly stolen in that country by settlers to use on their own shanties when they find owners of property absent. I made those improvements under the direction and instruction of Frank W. Eaton. I made no improvements there in my own behalf. I did not nor did anyone with me make any improvements for the purpose of claiming the land ourselves under the homestead or pre-emption law. 722

Q. Power says that you and he put homestead notices on the buildings. If you did so you may explain why it was done and what was the object? A. We went up to hold this land and make good improvements according to Mr. Eaton's directions, and had to put notices at different places on the land in order to prevent other explorers from squatting or making improvements on the land. Mr. Power understood this and why it was done just as well as I did. Mr. Power was 723
in my employ at the time. I remember of writing of the shanty "improvements" but do not remember of writing "Homestead" because we never intended to take a homestead.

Witness here shown the stake which was introduced in evidence by the plaintiff and testifies that he does not recognize any of his own writing thereon.

I don't know whether that stake came from the land or not. I do not recognize the writing on the stake as my own. I had the arrangement with Mr. Eaton before the improvements were made. The arrangement was made in Eaton's office in Duluth before we went up to the land.
724 The understanding was that I should receive a 1-3 interest in the land $50 in cash, all provisions and tools necessary to make complete the improvements. Mr. Eaton furnished the money as agreed, also tools and provisions after making the arrangements with Eaton I made one with James H. Powers I had intended to employ Warren Miller of Ontonogon, Mich., and make the contract with him but he could not be got at the time and so I took James H. Powers. I made the arrangement
725 in Welch's saloon with Power before we left Duluth to go to the land. I told him I was promised a 1-3 interest in these lands from Eaton for going to make the improvements, and to get that 1-3 interest we would have to go on the land, stay sometime and make improvements and when everything was settled I would divide the one-third with him and Clement, who was my partner when we made the discovery that the land was valuable. He agreed to the arrangement and went
726 with me and assisted in making the improvements under that agreement. I furnished him $20 to buy his outfit with to go there. Before starting I took him to Eaton & Merritt's office and introduced him to Leonidas Merritt. We inquired for Mr. Eaton but could not find him. I was present when Power talked to Mr. Merritt, Mr. Eaton's partner.

Q. Did he not state to Mr. Merritt in your presence that he understood from you that you

were to receive 1-3 interest in the land and that you had agreed to divide that 1-3 with him and Clement.

Objected to as leading and suggesting the answer to witness.

A. He did. Mr. Richard Fagan came up on the land while Power, Clement and I were making 727
the improvements. He came there twice. The first time he came he stated what he came for. He said he came to get the description of the land and to assist in making the improvements. He stated that Mr. F. W. Eaton sent him and he brought a letter from Eaton at the same time. The letter was addressed to me, Edward Byrne. Mr. Fagan worked about two days. It would take one man two days to cut the logs alone for each shanty to build the 728
shanty with, and one man could by no means handle the logs in erecting the shanties. The shanties were from 7 to 9 feet high. When Mr. Fagan came the second time Mr. Merritt came with him and I had no conversation with Fagan. We all left the land and came down to Duluth together. There were Mr. Merritt, Mr. Fagan, Power, Clement and an Indian or two and myself. The Indians were packers, the improvements were all complete when we left there. I did not take 729
Power out one side just before leaving the land and tell him what he was to get. He fully understood the whole matter before we left Duluth, in the first place. The first place we went to after returning to Duluth was Freidenburg's restaurant (called the Parlor saloon) and got our dinner. We then proceeded directly to the office of Mendenhall & Haines; Power, Clement, Merritt, Eaton Fagan and myself went there together, and we all

got our matters fixed up and the papers made out before we left there. I don't know whether Power was there all the time or not. Mr. Power was sober all the time he was there engaged in making out the papers.

Witness here shown Exhibit "C" and said that
730 he recollected Mr. Haines reading an affidavit containing the statement like the one contained in this. I signed this exhibit "C" and identify my signature. The paper I refer to as having been read over by Mr. Haines was made out by him and dictated by Mr. Eaton and was sworn to by Jas. H. Power, Edward Byrne (myself) and Jos. Clement.

Q. Examine Exhibit "C" and state whether the contents of it are true or not? A. They are
731 true. I believe Mr. Power fully understood the import of the exhibit "C" before he signed it. I and the other parties all received our pay from Mr. Eaton according to the agreement made before going up there to make the improvements.

CROSS EXAMINED.

732 Mr. Eaton was never on those lands to my knowledge. Mr. Eaton directed us to go and make good substantial improvements, in the same style as are made by pre-emptors and homesteaders in this country. He did not state specifically how much to clear but gave a general direction. I don't know whether Orillie Stram was on the land or not. I never saw any half-breed woman there. I did not know or had not heard of any such woman at that time. The first time I ever heard

Mrs. Stram's name mentioned was in Haines' office when we made the affidavit. When I made the arrangements with Mr. Eaton I understood that he had the scrip under his control. Either had it in his possession or had made arrangements for it. I had discovered the land about three weeks before going up to make improvements. Clement was with me when I found it. I was then at work for the Minnesota Iron Company. Clement and I were what are called mineral explorers at that time, and had been in the employ of the company eighteen months at that time.

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RE-DIRECT.

I run the biggest part of all the lines about this land. I run the line through the center of the section east and west. I run a true line east from the 1-4 post on the west side of section 30, run it east 1-2 mile. I did it in order to locate the land and find out where to place the improvements. This was before the survey of the interior of the township. I used a "Gurley's Dial Compass." I tested the accuracy of this line by retracing the range line for half a mile between sections 11 and 12. I found the compass correct and that my line was correct east and west, and a right angle line with the range line. The improvements were made north of this east and west line that I ran. They were two hundred paces north of the line. I know something about McPherson who made a subsequent survey. I do not consider him a

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competent surveyor, or any surveyor at all. I have worked under him on surveys.

Q. What do you know about his making surveys which were inaccurate before?

Objected to as irrevelant and immaterial.

A. I don't recollect any. I consider the sur-
736 vey I made accurate and made the improvement acting under that survey in good faith and believe they are on the land.

RE-CROSS.

The land in question shows signs of iron, and was the reason that I considered it valuable. I
737 will not say positively that I did not write "Homestead" on my shanty, or on the stakes.

Q. Do you say you did not write that on this stake in evidence? A. I cannot swear to anything about that stake.

Q. Now I want an answer distinct to this question "do you swear that you did not write this writing that appears on the stake heretofore introduced in evidence? A. No.

Q. Give me your opinion whether it is your
738 handwriting or not? A. I believe it is my handwriting.

Q. Particularly examine the word "Homestead" and say if that is your writing? A. I can't say, but think it is all my writing.

Q. Why was it not just as easy for you to write the name of the scripee for whom that land was being taken upon those improvements and stakes as to write your own name and Power?

Question by Register.

Q. For what purpose did you put these stakes there with your names? A. To keep other explorers and claimants off under our orders from Eaton and mislead and keep others off the land.

Preceding question objected to as frivolous. Objection sustained on the ground that witness 739
has already testified that at that time he had no knowledge of the name of the scripee and that the words written on the stake were written for the purpose of misleading others who might wish to squat on the land.

Plaintiff's attorney excepts to the ruling on the ground that it is arbitrary and not within the power of Register and Receiver under the rules promulgated by the General Land Office for their 740
government.

Q. You understood at the time you were making these marks that you were making this improvement under Sioux half-breed scrip, did you? A. Yes.

Q. Who did you understand owned this scrip? A. Frank W. Eaton.

Q. Why did you not mark the stakes and improvements on the land with Frank W. Eaton's name? 741

Same objection and same ruling as in the foregoing question.

Same exception by plaintiff's attorney.

Q. You thought then did you, that it would be better to serve your purpose to mark those improvements falsely than truly?

Same objection, ruling and exception.

Answer to question by Register:

I was aware that the lands were valuable four years before the improvements were made, but had not made a careful examination of them until about three weeks before making the arrangements with Mr. Eaton.

Q. Did you mark these lands as you did to
742 mislead any person who might have an interest in the land by settlement or otherwise or did you as being the first party who made the improvements thereon mark them to mislead and keep others off and thus protect the interests of Mr. Eaton who employed you? A. I marked them to protect Mr. Eaton's interests and keep others off as I was the first party to make improvements and I thereafter walked about the lines for days with a revolver to protect Eaton's interests and keep
743 others off.

Q. Was Lonstorf there while you were there? A. Yes. Mr. Hartmann was there also. The latter was there 10 or 12 days before Fagan & Merritt came. It was before Fagan came the first time. I had no talk with Hartmann that I recollect of about selling to him although I will not say that I did not have any such talk. I heard Mr. Hartmann's testimony.

Q. Did you not tell him as he said that if par-
744 ties were not there that day whom you expected you would treat with him for sale or words to that effect? A. I had nothing to sell. I don't remember of telling him so. I don't remember whether I told him so or not. I will not say whether I did or did not tell him so.

A. I can't say how many days I was there before Fagan came the first time but think about 15 days.

A. About the same length of time afterwards we came down.

A. We were about six days coming down.

A. We left here to go up there about the middle of May, 1883.

A. Were about six days going up.

A. We were on the land not quite a month 745
I think.

A. The improvements were not completed when Fagan left there the first time. My shanty was completed but Powers' was not.

A. Powers' was completed afterwards.

A. The door was hung on the inside and it fit as near as they generally fit in the woods.

A. There was a jam to the doorway.

A. The roof part that was covered with 746
shakes was a portion on each end, say a foot or 18 inches.

A. The shanties were chinked but not mossed.

A. I do not know whether Power drank any after he came in town that day at the Friedenburg's restaurant (Parlor saloon) or not.

A. I don't know whether he and Clement went across the street from Mendenhall & Haines' 747
office and got some drinks or not.

A. We were all three sworn to the affidavit in the same way, at the same time and by the same officer.

Q. How was that done? A. As near as I can recollect the affidavit was read over by Mr. Haines who asked if we understood it. We held up our right hands and swore to it and signed our

names. Then he went to the desk and put his stamp on it.

A. I saw Power hold up his right hand. By window I mean a hole cut in between the logs; we had no glass windows.

A. The contents of the letter from Eaton
748 which I spoke of were to the effect that he had been disappointed in getting the description of the claims from the man he had sent up there before, and sent Mr. Fagan up to get another description and assist us with the work. That was the substance of it.

Q. What was your idea in getting Power to go with you to improve this land if you already had Clement as a partner? Why did you and Clement not do it without taking a third man? A.
749 Because Clement had a pre-emption filing in 62, R. 16, at that time, and was well acquainted in the country.

Q. How did that make any difference with his assisting you alone without Power's help in making these improvements on the land that you were improving so that Eaton might get them with Sioux scrip? A. Because the parties that I was suspicious of would take advantage of the knowledge they had of Clement having a
750 pre-emption and go on the land in opposition to him sooner than they would against a man who had no filing.

Q. Did not Power have a pre-emption claim too? A. I was not aware that he had at the time I employed him in Duluth.

Q. Do you pretend to say that the fact that a man had taken a pre-emption claim would thereafter prevent him taking a homestead and that

was the reason why Clement could not go on this land and make improvements with you?

(Objected to for the reason that witness has not testified to anything of the kind included in the question but has explained his very reasons.)

A. I cannot answer the question. 751

RE-DIRECT.

When Fagan left for Duluth the first time the improvements were all completed except hanging the door and cutting a window. After he came there he assisted in completing them up to that point.

A. Speaking of Hartmann and what I told 752
him I will say that many people came there making propositions to me and I had to tell them anything I could devise to get rid of them and get them to leave me alone.

EDWARD BYRNE.

Subscribed and sworn to before me this 15th day of April, 1886.

R. N. MARBLE,
Register.

753

Richard H. Fagan, being duly sworn, says, I am 28 years of age. I make Duluth my home when not at work in the woods. I have been here since the summer of 1882. I am acquainted with Frank W. Eaton. Have known him since the summer of 1882. I know where the land in question

is located I have been on it. I was there twice during 1883. I went there for Frank Eaton and by his direction. I went then there first time to get the minutes of the land and also to help Edward Byrne make improvements. When I was returning I met Mr. Jas. H. Power going to the land
754 from Vermillion with supplies, and had a conversation with him. He told me he was helping Ed. Byrne make improvements on the two locations. He did not say who it was for. I helped Ed. Byrne build a shanty, put up the walls and put on a roof. The roof was made of shingles (split Norway) and cedar bark and birch bark. Ed. Byrne and I put the shingles on. They were put on both ends of the shanty 17 or 18 inches running from the edge of the roof to the top. They were put on
755 to hold the bark together and cover places where the bark did not come together. I saw the same shingles that were on these shanties, after Hyde and McDonald went on to the property. I saw that the shingles which were on Byrne's shanty had been taken off and put down to make a floor at a water hole. I also saw that the shingles which were on the house Powers' built were taken down and used for the same purpose. The improvements on the location were all complete except the hang-
756 ing of a door and cutting of a window hole in one shanty. When I left there to come to Duluth the first time I had a memorandum of the improvements and how they were made which I took to Mr. Eaton when I came down. It was in pencil and made by myself. I have the memorandum yet and can produce it. The original memorandum is torn and cannot be deciphered except by one who wrote it. I have a copy here which I have copied off.

Q. Can you state from your own memory without the aid of the memorandum what improvements you reported to Mr. Eaton? A. I can.

Q. State them?

Question withdrawn.

A. When I left the land to come and report the improvements to Mr. Eaton the following improvements were on the land. Two shanties (one on each location) with good roof, door and window, the window was a hole cut in without any glass, in Byrnes' shanty. And 1-2 an acre cleared on each location. Byrnes' was pretty well cleared off, and Powers' the same. 757

Q. Why do you call one claim Byrnes' and one Powers'? A. I speak of them thus to designate the improvements on each location. I speak all the time of improvements that Byrne made for Eaton and what have been alluded to in the testimony as Byrnes' shanty and Powers' shanty made by them in 1883, to locate the scrip in question. 758

A. I also afterwards went up to the land with Mr. Merritt to get the parties to come down.

A. The matter of the agreement that had been made was all talked over the Saturday evening before we started down on Monday morning.

A. Mr Power was present and took part in the conversation. 759

A. Mr. Merritt, Byrne, Clement and Powers and myself sat by the camp fire and talked the matter over as arranged in Duluth before Byrne and Power went up in the first place. Mr. Merritt, Byrne and Power all talked of the arrangement Eaton and Byrne had made previously in Duluth, they all seemed satisfied with it. The quantity of interest was talked over to the effect

that Byrne was to receive 1-3 interest. He also agreed to give Clement and Power 1-9. This was mentioned as the interest that had been talked and arranged by Byrne and Eaton in Duluth. Powers said that he was satisfied and that he was ready to go to Duluth as quick as we could. Pre-
760 vious to this time I had run that line through the centre east and west through section 30. I run east from quarter post in the west line of section 30. I went to the N. E. section 25-63-12, traced the range line south to the 1-4 post between section 25 and 30, then run east 1-2 mile, found the improvements located north of the line then continued on 1-2 mile farther and found the location of the second improvements north of the line I was running, both improvements were located
761 200 paces north of the line the paces run about 5 1-2 to the rod according to my pacing the line I was running being the center line of the section east and west. This was before the government survey of the interior of T. 63, R. 11 W. I run the line with a pocket compass that I have used in tracing government surveys for years before, and have always found accurate and correct in every point.

Q. Have you been in section 30, T. 63, R. 11
762 W. since the government survey has been made and is the 1-4 post of the west side of section 30, 63, 11 W. the same 1-4 post as was made for the east side of sections 25 and 63, R. 12 W.

A. It was the same the last time I saw it.

Q. And in running east from that quarter post are the improvements on the land which are described by metes and bounds in the location of the scrip? A. They are.

A. I know McPherson, the person who testified to having made a subsequent survey of this line.

A. Have known him since the fall of 1882.

A. I know him to go by the name of a surveyor.

Q. Do you consider him a competent surveyor. 763

Objected to because the witness is not competent.

A. I do not. I traced his work several times and found his section corners an eighth of a mile out of the way. This I know for a fact and can bring witnesses to prove it.

(Objected to as not responsive to the question.)

764

When I came down from the land the second time Merritt, Byrne, Clement and Powers were with me. Powers was sober on the way down. He was dead sober when we started and dead sober when we got here. We came from Northern Pacific Junction to Duluth. When we got here we went to Friendenburg's restaurant (Parlor saloon) direct and got dinner all of us. From there we went to Mendenhall & Haines' office. After we went to that office none of us left there until the papers were all made out except Mr. Eaton, who went out a short time to get some papers. Mr. Powers was entirely sober while in there. 765

Look at this paper, Exhibit "C" and see if you know it? A. I did not look over the paper there but I know that Clement, Byrne and Power signed just such a paper as that. The contents were read over to all three of the parties in my presence. It was also sworn and signed in my

presence. I was familiar with the facts set forth in the paper and knew at that time and how that they are true.

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766 CROSS EXAMINED.

April 16, 1886.

I am not a civil engineer and surveying is not my occupation. I have studied surveying a little in school but not enough to follow it as my business. I saw these shakes that were put on to the shanties built by Byrne and Power, last June, 1885. I cannot say how many of those that were once on the roof, I saw in June, 1885, I think about
767 2 or three dozen at both locations I have described. In 1883 there was in the neighborhood of 3 or 4 dozen, on each roof of these shanties. I saw from 1-3 to 1-2 of those same shakes at the water holes in 1885. I do not think the tops of the roofs after the shakes had been removed show just where the shakes had been placed.

Q. Are you positive about this testimony as to the shakes you saw there in 1885 as you are
768 about any of the rest of your testimony? A. I am as positive as to these shakes.

A. In the talk had at the camp the Saturday night before we all started for Duluth Powers said that he was glad and pleased to see Lon Merritt on the location. So that Byrne and him could get back to Duluth. He talked two or three hours and said he had been working there with Byrne making the improvements and that they had got them complete.

Q. What else do you remember that he said?
A. He then talked with Lon Merritt and Byrnes and I did not listen to them.

A. I heard Powers speak of his interest in the land that night.

A. He said, is this right Mr. Merritt. When Byrne gets his 1-3 we will get ours with him? 769

A. I do not remember that he said anything else. I heard more conversation on the part of Power after that before we came to Duluth. This was on the land on the following Sunday. We were hanging the door in the shanty built by Byrne. He said we will all be on our way to Duluth in the morning. Power and I hung the door in the shanty.

A. He also said on his way down "Byrne is going to get an interest in this and I am going to get an equal interest with him and can't we arrangs some way to form a stock company with Eaton & Merritt. That is all on that point at that time. 770

A. As we came down the St. Louis River to Knife Falls and Northern Pacific Junction he talked on the same subject and in the same way. At Northern Pacific Junction and Duluth he talked about the same matter. I do not recall his words except that he talked of a stock company. Power never drank but one glass of liquor before going to Mendenhall & Haines' office and that was a glass of beer at the restaurant. He never left the office there until the papers were signed, and drank nothing during the time. The papers were signed about 2 1-2 hours after we came to Duluth. 771

Question by Receiver:

A. Mr Power had no drink before we got to Duluth that day. We came together to Duluth, and went all together to the restaurant, took dinner and then went direct to Mendenhall & Haines' office all together.

Q. Did you keep such watch of him that you
772 know that he did not go out of that office until the papers were signed? A. I kept no more watch of him than I did of the others and I know that no one left the office prior to the signing of the papers except Frank Eaton who went out a moment to get some papers.

A. When I met Power as I was coming from the land the first time he told me he was working for Byrne and that he was then taking in supplies
773 to him. That was all on that subject.

A. The marks were on the improvements when I was there the first time, on the shanty and on the stakes.

A. On the shanty, on the third log from the ground on the left hand as you go in the door was "Edward Byrne's improvements. (Description of land.) (Date of settlement and improvement commenced.) (Settlement continued and date.) Then (Again continued and date.) This was written in
774 pencil. The second time I was there I think Hartmann's and Harvey's names were on the shanty. The word "Homestead" was not written there in that place. It was not any place else that I saw. I have seen the stakes also and Jos. Clement and I wrote on them. I wrote in my own hand writing. I mean by water hole a well they dip up water.

RE-DIRECT.

I am following exploring for a living and have for over five years. I put all my time in looking government land, locating and estimating, in Duluth and St. Cloud district and St. Croix River. I have had experience in running lines and looking up posts. It is part of my business to get cor- 775
rections and look up corners and meander p
A man in my business has to be very particular in getting the proper corrections and all posts and corners in order to make correct locations and a man in my business gains a great deal of knowledge of surveying by this practice.

RE-CROSS. 776

I generally run my lines with a pocket compass when locating land and take my distances by pacing. I find the boundary lines by going to the corner of a section then running east or in any direction I may desire to circumscribe, or to locate any quarter post, and in subdividing a section I go from quarter post to quarter post or from quarter post to corner.

R. H. FAGAN. 777

Subscribed and sworn to before me this 16th day of April, 1886.

R. N. MARBLE,
Register.

James H. Finn, being sworn, says, I reside in Duluth, Minn., (Rice's Point Division). Saloon

keeping was my last occupation. In 1884 and 1885 I was an explorer. I was at the Byrne shanty in August, 1884. I did not stop there at all, just went past. The last time I was there was in December, 1885. I was then also there in July, 1885. I may have been there a dozen times altogether.

778 I did not notice the Byrne and Power shanties particularly. I do not know what the Byrne and Power shanties are of my own knowledge. I have been told. I know where the Hyde and McDonald shanties are. The other two shanties that I have been told were the Byrne and Power shanties were Byrnes about 50 feet from Hydes and Powers, about 100 feet from McDonald's. I never saw any shakes around there at any time.

Question by Register.

779 Q. Do you know of there being any such place as Fagan has testified to as being a water hole? A. I don't. There might have been a dozen there and I not know anything about it.

Q. Was there any shakes at any time you were there laid down as a floor to any well, water hole or watering place near Hyde or McDonald's shanties or either of them apparent to you? A. No sir.

780 ———

CROSS.

Q. Do you know whether there was any shakes there or not? A. I do not. I did not see any There might have been some around there that I did not know anything about.

Defendant moves to strike out the testimony of Fann on the ground that the witness does not

profess to know anything about it, and that it is immaterial and that the whole of that kind of evidence offered by the witness is frivolous and not competent to the issue.

JAMES H. FINN.

Subscribed and sworn to before me this 16th day of April, 1886. 781

R. N. MARBLE,
Register.

Argus McDonald, recalled in rebuttal, says:

Q. State whether or not at any time since you went on to the land you are residing on in August, 1884, there had been any shakes around those 782
premises that were made previous to your going there? A. No sir.

A. If there had been any I certainly should have seen them I think.

A. I have frequently been over to Hyde's place.

A. There were no shakes around there either.

A. If there had been any there I would have seen them as I have worked all around there. 783

A. There was no water hole around there floored with shakes. I had a water hole in my place timbered, but not with shakes.

A. There was no water hole near Hyde's place, but a running creek. My water hole was fixed with timber about 2 inches thick which I cut myself. I could not get water out of this hole except in the fall and spring.

A. I usually get water from the creek. The logs in Powers' shanty are all the way from 8 inches to a foot in diameter, but in the Byrne shanty they were not so large.

A. I never measured the heights of the shanty and do not know. A. A man could cut.
784 the timber (fell the trees and cut it up) for either shanty in half a day.

A. I could put up the Byrne shanty alone, but could not very well put up Power shanty alone as the timber is larger.

CROSS.

785 Q. Is there not a dug well from 25 to 30 paces west of your shanty?

A. There was a hole there but it was not a dug hole.

A. It is a hole that I have got water from in wet seasons. This is the one that I timbered up.

A. It is hardly a foot deep.

A. It is a mud hole.

A. I could not see any rocks about the holes.

A. It is near the foot of an elevation which
786 I could not call a bluff, and I don't know what kind of a bottom it has. The timber in the Byrne shanty is from 5 to 10 inches in diameter.

A. All I know about there not being any shakes on the roofs of the Byrne and Power shanties was that I saw none when I went there in 1884.

Q. Did you ever make an examination of those premises solely for the purpose of ascertaining

whether there was any shakes around there or not? A. I did not.

Q. Did you when you went there have any instructions from anybody to ascertain whether there was any shakes there. A. I did not.

Q. Was there not a good deal of rubbish around there. A. I saw nothing but tamarack 787
bark.

Q. Will you positively swear that there was no shakes when you went there, around either one of those shanties or around the premises? A. There was none around the clearings or around the improvements.

A. Norway pine shakes would make good kindling if they were dry and any woodsman that came around would be glad to get them for kindling if they were dry. 788

RE-DIRECT.

A. There were roots at the water hole.

789

RE-CROSS.

A. I timbered my well with poplar cut in strips a foot and a half long. Two inches thick and about two inches wide.

ANGUS McDONALD.

Subscribed and sworn to before me this 16th day of April, 1886.

R. N. MARBLE,
Register.

REBUTTAL.

Thomas W. Hyde, recalled, says:

I have never seen any shakes on the shanty built by Byrne or around there or around the water hole alluded to by Mr. Fagan. I get my water right south of my shanty out of a running creek.
790 I never had any well or water hole more than I cut through the ice when the creek is frozen. I never used any shakes at all for any floor around that. There could not have been any shakes around my shanty or my creek without my seeing them. The shanties are about 45 or 50 feet apart. All that I saw that could be split around there was what was split for a door and table. I did not see any shakes around the Power shanty either. There was none on the roof which was cov-
791 ered with bark. There was no shakes around there that I could see. I was over there frequently. If there had been any shakes around there I would have seen them. McDonald gets his water out of the same creek as I do only higher up the same.

Q. What sized logs is the Byrne shanty built of?

(Objected to as not rebutting evidence and
792 not material to any evidence in the case.)

A. They will average about 8 to 10 inches, 14 and 16 feet long, red pine, jack pine, Norway and tamarack.

A. The shanty is about 5 feet 10 inches high.

A. A man I should consider could cut the logs inside of a half a day.

A. Two men could handle them easily.

CROSS.

A. I say that the shanty is about 5 feet 10 inches high.

Q. Will you swear positively that in giving your testimony before here, you did not swear that the shanty was about 7 feet high, the log part I mean? A. Not to my knowledge I did not. 793

Q. Will you swear positively that you did not so testify. I want an answer, yes or no? A. I believe I did not say so.

Q. Do you want yourself placed upon record here as testifying under oath ,that a man could fell the trees, cut them the proper lengths, where the trees would average 8 to 10 inches in diameter, according to your testimony for that shanty of Byrnes in less than one-half day? A. Yes sir, 794 I can cut them in less than half a day.

A. What might take one man half a day might take another longer.

Q. Is there not a dug well from 25 to 30 paces west of McDonald's shanty? A. Not to my knowledge. There is hole there between some rocks.

Q. Are you as positive that there is not a dug well in the locality I have spoken of as you are to any testimony you have given since you have 795 attended this case before the Register and Receiver? A. I am.

Q. When did you go there to reside? A. In August, 1884.

A. When I went there part of the roof was gone from the Byrne shanty.

A. I do not know what covered that part of the roof that was gone.

A. I don't know whether it was shingles of bark on that part.

Q. You have no knowledge as to what the roofs of those shanties were covered with when they were built other than what you say when you went there in August, 1884? A. Nothing but
796 what I saw on it when I went there in August, 1884.

A. My shanty is on a hill and about 45 or 50 feet east of the Byrne shanty.

A. I have to go down the bluff about 40 or 50 feet to get water from the creek. It is about 30 paces to the creek but the bluff is about 45 or 50 feet high.

A. I got my water there instead of providing a well.

797 Q. Did you not testify before in this case that there was no table in Byrnes' shanty? A. I did not.

RE-DIRECT.

A. The Byrne shanty is about 7 feet high at the peak.

THOMAS W. HYDE.

798 Subscribed and sworn to before me this 16th day of April, 1886.

R. N. MARBLE,
Register.

Plaintiff's attorney gives notice that he will apply for an order to take testimony by deposi-

tion of Orillie Stram, Jac. Raffauf, Thomas Ross and Jos. Clement all of whom are outside of the State of Minnesota. And rests.

It is stipulated and agreed upon that this testimony shall be considered in determining the validity of both locations of scrip, 19 D. and 19 E.

799

Defendant offers in evidence two powers of attorney from Orillie Stram, formerly Orillie Moreau, and Roman Stram, her husband, of Crawford County, Wisconsin, to Leonidas Merritt, to convey land, one under and by virtue of Sioux or Dakota half-breed scrip No. 19 D., for 160 acres, 800
issued to Orillie Moreau, now Orillie Stram, the other to convey land under and by virtue of the same kind of scrip, No. 19 E.

(Objected to as irrelevant and immaterial as it already appears in evidence that they were not filled up with the name of any attorney at the time of the execution thereof, nor until some time after the scrip and accompanying papers were purchased by and delivered to Frank W. Eaton.)

Marked Exhibits "T" and "J" and received 801
and filed. Defendant also offers in evidence a printed map of T. 63, R. 11 W., 4th P. M., Minn., accompanied by and attached to a profile of McPherson's survey of the center line of section 30, T. 63, R. 11 W., according to McPherson's evidence and copy of the county surveyor's record.

Received marked Exhibit "K." and filed.

Defendant rests.

(Copy of Book J. of Deeds, page 580.)

(Lake County.)

No. 6490. U. S. Land Office, Receiver's Receipt to Frank Hicks, assignee.

Filed for record October 22d, 1897, at 6 o'clock P. M.

802 No. 14396.

RECEIVER'S OFFICE, Duluth, Minn.,
October 20th, 1897.

DUPLICATE.

Received from Frank Hicks, assignee of Stephen Boyd of St. Louis County, Minnesota, the sum of Two Dollars and .02 cents, being in full for the lots 3, 5 and 6 of section No. 30, in township No. 63, N. of range 11 W., 4th P. M., containing
803 one....acres and 61 hundredths at $1.25 per acre.

F. L. RYAN,
Register.

$2.00.

$.... testimony fee received, number of written words..... rate per 100.....cents.

(Written across the face in red ink.)

804 "Excess to additional Homestead Entry No. 10735 under section 2306, R. S."

(Copy of D. of Deeds, page 204.)

(Lake County.)

Excess Rec. receipt, U. S. Land Office, Orillie Stram.

Filed for record December 5th, 1885, at 3 o'clock P. M.

Excess Receiver's Receipt.

No. 7762.

Received of Orillie Stram, the sum of Two Dollars .....cents, being in full for one acre and 61 hundredths, of lots 3, 5 and 6 and S. E. 1-4 of N. 805
W. 1-4 section 30, in township No. 63, N. of range 11 W., being excess in said tract over the acre entered under the Sioux half-breed scrip No. 19 E., R. & R., 188.

E. G. SWANSTROM,
Receiver.

$2.00

806

(Copy of D. of Deeds, page 205.)

(Lake County.)

Warranty Deed, Orilie Stram and husband to Frank W. Eaton.

Filed for record December 5th, 1885, at 3 o'clock P. M.

This indenture made this thirtieth day of October in the year of our Lord one thousand eight hundred and eighty-five, between Orilie Stram (be- 807
fore married Orilie Moreau) and Roman Stram, her husband, by Leonidas Merritt, their attorney in fact, parties of the first part, and Frank W. Eaton of Duluth, Minnesota, party of the second part, witnesseth—

Whereas, on the 13th day of June, A. D. 1883, grantors herein by their attorney in fact, caused to be filed in the U. S. Land Office at Duluth, Minnesota, an application for certain lands and Sioux

half-breed scrip No. 19 D. and No. 19 E. each for 160 acres of land thereby by virtue of the laws of the United States and conditions precedent, which have been complied with, vesting the title to the said lands described in said application by metes and bounds in her, the said Orilie Stram (said
808 description being by metes and bounds for the reason that said land had not yet been surveyed by the government); and whereas, said land has since been surveyed under the direction of the government and a plat thereof filed in the said U. S. Land Office at Duluth, upon which said plat the aforesaid scrip and entry was adjusted July 21, 1885, thereby specifically and properly describing the land filed upon and intended to be entered on June 13th, 1883, in the name of said
809 Orilie Stram, by her attorney in fact,

Now, therefore, in consideration of one dollar and for the purpose of reaffirming, reforming and properly describing certain deeds of conveyance of said land heretofore given, said parties of the first part hereby grant, bargain, sell and convey unto the said party of the second part, his heirs and assigns, forever, all of an undivided seven-ninths part of said interest in and to all of the following pieces, parcels and tracts of land sit-
810 uate in the Counties of Saint Louis and Lake in the State of Minnesota, described as follows, to-wit: Lots one (1), two (2), three (3), five (5) and six (6), the southwest quarter of the northeast quarter, and southeast quarter of the northwest quarter, and he northwest quarter of the southeast quarter, all being in section thirty (3) and in township No. sixty-three (63) north and of range No. eleven (11) west of the fourth (4) principal meridian in Minnesota, containing according to

the United States government survey three hundred thirteen and sixty-one hundredths (313.61) acres more or less.

To have and to hold the same together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining to the said party of the second part, 811
his heirs and assigns, forever. And the said parties of the first part for their heirs, executors and administrators do covenant with the said party of the second part, his heirs and assigns, that they are well seized in fee of the land and premises aforesaid and have good right to sell and convey the said land in manner and form aforesaid; that the same are free and clear from all incumbrances and the above bargained premises in the quiet and peace- 812
able possession of the said party of the second part, his heirs and assigns, against all persons lawfully claiming or to claim the whole or any part thereof the said parties of the first part will warrant and defend.

In testimony whereof the said parties of the first part have by their attorney in fact hereunto set their hands and seals the day and year first above written.

ORILIE STRAM, (Seal.) 813
By LEONIDAS MERRITT, (Seal.)
Her Attorney in Fact.
ROMAN STRAM, (Seal.)
By LEONIDAS MERRITT, (Seal.)
His Attorney in Fact.

Signed, sealed and delivered in
presence of
R. N. MARBLE,
W. C. JOHNSON.

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

On this thirtieth day of October, A. D. 1885, before me, Ralph W. Marble, notary public, in and for said county, personally came Leonidas Merritt, as the attorney in fact for Orillie Stram and
814 Roman Stram, and acknowledged that he executed the foregoing deed freely and voluntarily as the act and deed of the said Orillie Stram and the said Roman Stram.

RALPH W. MARBLE,
Notary Public,
Saint Louis Co., Minnesota.

(Notarial Seal. St. Louis County, Minn.)

815

I hereby certify that I have examined the foregoing proposed case and that it contains all the evidence, objections, rulings and exceptions and other proceedings had on the trial of the foregoing entitled action, and that on motion of Wal-
816 ter Ayers, attorney for plaintiff, L. C. Harris appearing for the defendants upon the settlement, I have settled and allowed the same as and for the settled case in the above entitled action, viz: The Midway Company versus Frank W. Eaton, et al.

Dated December 28th, 1899.

By the Court,

S. H. MOER,
Judge.

STATE OF MINNESOTA, COUNTY OF ST. Louis, District Court, Eleventh Judicial District.

MIDWAY COMPANY, Plaintiff, 817

vs.

FRANK W. EATON, ET AL., Defendants.

NOTICE OF MOTION.

Please take notice, that on the 28th day of December, A. D. 1899, at the hour of eleven o'clock 818
in the forenoon, or as soon thereafter as counsel can be heard, at the chambers of the Hon. S. H. Moer, at the Court House, in the City of Duluth, a motion will be made that the decision in the above entitled cause be vacated and a new trial granted, for the following causes, to-wit:

1. That the said decision is not justified by the evidence.

2. That the said decision is contrary to law.

3. For errors of law occurring upon the trial 819
and duly excepted to by the plaintiff herein.

Such motion will be made upon all of the files in said cause and upon the case settled and allowed herein.

Yours respectfully,

WALTER AYERS,
Attorney for Plaintiff.

Dated December 28, 1899.

To Messrs. J. L. Washburn, W. D. Bailey, L. C. Harris, Frank Cutting, W. B. Phelps and Phelps & McClintock, attorneys for defendants.

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820 Due service of within notice by copy admitted this 28th day of December, 1899.

J. L. WASHBURN AND
W. D. BAILEY,
Attorneys for Merritt, Clark and Fagan.
FRANK CUTTING AND
TOWNE & HARRIS,
Attorneys for Eaton.
WM. B. PHELPS AND
PHELPS & McCLINTOCK,
821 Attorneys for Defendant Lonstorf.

STATE OF MINNESOTA, COUNTY OF ST. Louis, District Court, Eleventh Judicial District.

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822 THE MIDWAY COMPANY, Plaintiff,

vs.

FRANK W. EATON, ET AL., Defendants.

ORDER.

Motion having been made in the above entitled cause, that the decision therein be vacated

and a new trial granted upon the ground that the decision is not justified by the evidence and is contrary to law, and also that errors of law occurred upon the trial of said cause, which were duly excepted to by the plaintiff, said motion being based upon all the files in said cause and the case as settled and allowed therein, now upon 823
due consideration,

It is ordered, that said motion be, and the same hereby is, in all things denied.

By the Court,

S. H. MOER,
Judge.

Dated December 28th, 1899.
Filed December 28th, 1899.

824

STATE OF MINNESOTA, COUNTY OF ST. Louis, District Court, Eleventh Judicial District.

THE MIDWAY COMPANY, Plaintiff,

vs.

FRANK W. EATON, ET AL., Defendants. 825

MEMORANDUM.

I find upon examination of the memorandum heretofore filed by me in this case that it does not

cover all of the points raised in the opinion of the Hon. Secretary of the Interior, and, deeming the issue as made in the pleadings, to be of great importance, I now make and file this memorandum in place of, and as a substitute for, the one originally filed in said cause.

826 Under the Act of July 17th, 1854, one Orillie Moreau received from the United States two certificates, numbered 19 D. and 19 E.

These certificates were commonly known as "Sioux half-breed scrip." Such certificates authorized the party named therein to locate the same upon any of the unoccupied lands of the United States subject to pre-emption or private sale. In case of surveyed lands no act other than the application to locate such scrip was required. In case
827 of unsurveyed lands the act provided that improvements should be made; the kind and character of such improvements to be so made not being specified.

The Act contained the following provision: "No transfer or conveyance of any of said certificates of scrip shall be valid."

The scrip issued under the Act of July 17th, 1854, soon appeared upon the market and was commonly supposed to be available for the purpose
828 of acquiring title to lands of the United States subject to entry thereunder. The method adopted for utilizing such scrip was substantially as follows: The half-breed would give to the purchaser, 1st, a power of attorney to locate the scrip; 2nd, a power of attorney to convey the land to be acquired under such location. In most cases such powers were in blank, the necessary descriptions being filled in at or shortly after the land was located.

The traffic in Sioux half-breed scrip under this system was very large. The scrip being available, as used, for securing title to land, soon became very valuable on the open market. It is probable that of all the scrip issued under the Act three-quarters to four-fifths of it has been handled in exactly the same way as was the particular scrip 829
in the case at bar. The practice being so universal it can safely be assumed that it was well known by the Land Department.

For over thirty years this scrip passed from hand to hand until located by the then holder. During all this time the validity of such location was never, but once, questioned, nor was the question ever raised by the Land Office Department as to its regularity, and it is apparent that the Land Department and the general public's construction 830
of the Act in question was that such transactions were legal and proper. In fact, in the case of Felix vs. Carroll, under date of March 27th, 1865, Judge Otto, as Assistant Secretary of the Interior, held, over-ruling the commissioner, such a location valid. The opinion of the assistant secretary, so far as covers the matter of location, is as follows:

"As to your second objection (that the location of the scrip was invalid) I remark that this kind 831
of scrip is by the law declared to be unassignable. In this case Sophia Felix has signed the application to locate her own scrip. The fact that the scrip was carried to the Land Office and the business transacted by another person does not affect the validity of her interest in the land. As the certificate of location issued in her name and the patent will issue to her, neither the Register's report nor the affidavit of third parties can be ad-

mitted to establish the interest of any other person in the location. We would not recognize such interests if an assignment in writing was produced and duly proved to have been executed by the half-breed.

Whether she would sell, or did sell, the land
832 after the location of her scrip, we need not inquire, and the validity and effect of any such sale or assignment must be left to the arbitrant of the courts of law. The location is valid on its face and the owner of the scrip, so far as she is represented at all, demands the patent to issue in her name, and my decision is that she is entitled thereto."

The Commissioner of the General Land Office had held that the location of the scrip, though made in the name of Felix, was not made by her in
833 person, or by her duly authorized agent for her use and benefit, but by unauthorized persons and for the use and benefit of persons having no legal interest therein.

Out of this case grew the case of Felix vs. Patrick, 145, U. S. Sup. Ct. Rep., page 862, et seq., and upon which the plaintiff relies very largely for a decision in its favor.

The decision of the assistant secretary (Judge Otto) made in 1863, was never called in question,
834 so far as I can learn, until 1886, when the same point was raised in the case at bar and in the case of Allen et al. vs. Merrill et al., before the Secretary of the Interior (Mr. Vilas) and the ruling of the department which had stood for twenty-six years was at that time reversed.

The Commissioner of the General Land Office held the location of the scrip in the case at bar invalid for the reason that the power of attorney

given by the scripee to Eaton, by virtue of which he made the location, did not carry with it under the law, the power and authority to make the improvements which were necessary as a pre-requisite to a valid location of the scrip on unsurveyed land.

The Hon. Secretary of the Interior in his opinion, says: 835

"The scripee never saw the land. At the date of location she had never seen Eaton, who acted as her attorney in fact, and did not then know that there was such a person in existence. She had, as a matter of fact, sold the scrip long prior to the location and had no personal interest in the land, nor were the improvements made for her personal use and benefit. It was a matter of no moment to her where the scrip was located, or 836 whether it was located at all or not. Her actual interest ceased when she disposed of the scrip. It was admitted by her so-called attorneys in fact that she was to have no interest in the land. For a long time she directly and positively repudiated Eaton and Merritt as her attorneys in fact, denying that they acted for her in any capacity whatever. Afterward and but a few days prior to the hearing, she ratified by deed what had been done by them. This ratification, it is evident, was pro- 837 cured at the solicitation of Eaton or Merritt or both, and for a consideration. But such ratification does not change the fact that the improvement and location, though made under the guise of a power of attorney, were made not under the direction and in the interest of the scripee, but for the benefit solely of another, not even known to the scripee, viz: Eaton, who had inserted his name as attorney in the power of attorney executed in

blank. If the location of the scrip was illegal and invalid, then the deed of ratification could not give it validity—could not vitalize that which originally had not in it the germ or essence of legal validity."

The secretary thereupon holds the scrip locations invalid and declares the land in question to be open to disposal under the public land laws of the United States applicable thereto.

From the language quoted the Secretary of the Interior seems to hold the scrip location invalid for two reasons:

1. Because the improvements were not made by her in person or under her direction and in her interest.

2. Because she had violated the provision of the Act of Congress of July, 1854, prohibiting transfers or conveyances of the scrip.

The vital question in this case may then be stated thus: Was the location of the scrip under all the facts and circumstances invalid?

If it was invalid by reason of the fact that the improvements placed upon the land were not so placed thereon under her immediate supervision or direction, then defendants have no standing in court. If it was invalid because under all the facts and circumstances, the transaction amounted to a transfer or conveyance of the scrip in contradiction of law, such invalidity is equally fatal to the success of the defendants.

It was ruled by the Commissioner of the General Land Office and apparently followed by the Secretary of the Interior, that the improvements placed upon the land, not having been made under the immediate direction of the scripee and not be-

ing for her direct benefit, could not be accepted as the improvements required under the Act of Congress and the rule of the department and therefore the location was invalid.

Was such conclusion correct as a matter of law?

841 The Act of Congress of July 17th, 1854, required that improvements should be made upon unsurveyed lands. How such improvements should be made, or in what manner, is not indicated.

The rule of the Land Office required that the Indian should have a direct connection with the land and claim the same for his or her personal use (See circular of May 28th, 1878. 5 C. L. O., 126).

842 It would seem clear that if the rule of the Land Department required anything more to be done by the scripee than did the law itself, that such rule or regulation could be of no force or effect and any rule or regulation of the department which in any way tended to vary or change the law should have been disregarded by the secretary in arriving at his opinion.

843 Under the Act of July 17th, 1854, the half-breed might locate his scrip upon the surveyed lands without showing any improvements whatever. On unsurveyed lands improvements of some kind were required. Why did the Act allow the scripee to locate his scrip on surveyed lands regardless of improvements and require him to show improvements in case of unsurveyed lands. Clearly Congress cared nothing for the improvements themselves and evidently had no thought of making the half-breed a settler on unsurveyed lands.

If this had been the idea, it would have applied with equal force to the surveyed lands as well. As is well known, settlers and occupants of unsurveyed lands acquire certain preferential rights under the land laws of the United States, and it was necessary for Congress having this fact in mind to make some provision whereby persons
844 desiring to settle upon unsurveyed lands, might have NOTICE of the rights of the half-breed. If no improvements of any kind had been required of the half-breed upon unsurveyed lands, all other of our citizens would have been placed in an exceedingly perilous situation, having no means of knowing that there was any claimant to a particular piece of land, settlement might have been made thereon and when the surveys thereof were
845 returned, the application refused for the reason that the same was claimed by location under the scrip issued under the Act of 1854.

This would manifestly have been unjust to the settler. To avoid this Congress provided for improvements upon the unsurveyed lands; this would give notice that some sort of claim was made to a particular tract and in that way deter innocent persons from settling on the same.

If the only object of the requirement for im-
846 provements was to give notice of the claimed right of the half-breed to the land, then it would seem to be immaterial who made the improvements or how they were made. If Eaton in the case at bar, acting under the power of attorney to locate, made the improvements under such power, it was equivalent to the half-breed's doing it herself.

Notice being the primary object of the improvements, those erected by Eaton or his hired

man would be as effectual for the purpose as though the half breed had made them with her own hands.

If improvements were a necessary and essential factor in the location of the scrip, then the power of attorney to locate the scrip necessarily embraced the power to do all things necessary and requisite therein. It would seem to follow that if Orillie Stram could locate the scrip by attorney she could likewise improve by attorney. It is a well settled rule of law that the grant of a power to do a particular thing carries with it the power to do all things necessary and incident to its full execution. 847

The improvements being but an incident to carrying into effect the location of the scrip, Eaton must be held to have acted for the scripee therein. It is admitted by plaintiff that it and its grantor had full and complete notice of all the claimed rights of Orillie Stram, nee Moreau, in and to the land in controversy. 848

That such notice was received long prior to any claim being made by it or its grantors to the premises in question, it therefore becomes in my judgment immaterial as to how or in what manner the improvements were placed upon the land. In fact, there being no intervening rights, I am of the opinion that if no improvements whatever had been made upon the land, such fact, and of itself, would not invalidate the location. The sole object of the improvements was notice. No one being injured by want of the improvements, why should the want of them invalidate the entry? 849

Whether this be so or not, concededly there were improvements in this case placed upon the

land by Eaton. I therefore hold that the scrip location was valid so far as it could have been affected by the provision of law requiring improvements.

2.

850 Was scrip location made by Eaton, as attorney in fact for Orillie Stram, nee Moreau, invalid?

It is argued on the part of the plaintiff that as the power of attorney to Eaton was given for the purpose of locating land in the name of Stram, which was to be thereupon conveyed (under the power of attorney from Stram to Merritt) to Eaton, the transaction was in fact a mere device to avoid
851 the provisions of the Act of Congress prohibiting the transfer or conveyance of such scrip, and therefore the location made under such power to Eaton was invalid.

"No transfer or conveyance of any of such certificates of scrip shall be valid."

It will be observed that alienation of the land acquired by location of the scrip is not prohibited.

That there is a marked distinction between prohibition of alienation of scrip and prohibition
852 of alienation of the land acquired by the location of the scrip, seems clear.

This distinction is recognized in Myers vs. Croft, 20 L. C. P. Co., page 562.

In construing a contract, the Court will always hold in favor of the power of alienation, unless such power is expressly prohibited in language which admits of no doubt. If it be doubtful such a construction will be given as will enable the par-

ties to have the full use and benefit of the property. The power of alienation being one of the highest attributes of ownership, will never be taken away by interpretation or construction. Congress did not in terms prohibit the alienation of the land to be acquired under the scrip location and the courts will not construe a provision prohibiting alienation of scrip to mean land as well. 853

I am of the opinion therefore that the provision cited did not prohibit the alienation of the land to be acquired by location of the scrip. The Act of July 17th, 1854, while in form a law, was in fact a contract with certain half-breed Sioux Indians, whereby and whereunder the half-breed surrendered to the United States government their certain reservation, and, in consideration thereof, the United States agreed to issue to the various 854 members of the tribe certain scrip, such scrip entitling the party named therein to a given amount of land to be by him or her selected from any of the lands belonging to the United States, subject to entry by pre-emption or at private sale—in other words a trade or exchange of lands was effected between the United States and the Sioux half-breed.

The Act of July 17th, 1854, is the contract under which the exchange was effected. 855

The United States desired to open up this resertion for settlement, as it was known to be a fertile and well watered tract, in every way suitable and desirable for agricultural and other purposes.

The Sioux half-breed could locate his scrip on the land within the boundaries of the reservation, and had all of them done so, little, if any

land, would have been opened for settlement and cultivation by its more progressive and enterprising citizens, unless the half-breed could sell his land procured under the location of his scrip.

If the sale of the land had been prohibited, the very purpose of securing the opening of the
856 reservation would have been defeated by the same Act which threw it open for settlement.

Obviously Congress did not intend that any such result should or could follow.

Why was it then that Congress inserted a provision in the contract prohibiting the alienation of the scrip?

As the half-breed could not sell his land at any time, why prohibit him from selling the thing that represented it?

857 Was it for the protection of the half-breed or merely for the convenience of the government, or were both these things taken into consideration by Congress in inserting the provision?

If the intent was to at least give the half-breed partial protection from his shrewd and worldly wise white brethren, then the extent of that protection seems to have been to see that by no method whatsoever should the title to the lands secured by the location of the scrip be taken
858 in the name of any other person than the original scripee. If any further or added protection had been deemed necessary or desirable, would not Congress have expressly prohibited the alienation of the land to be acquired until after patent should be issued or for such other period as in its judgment seemed fit?

If the intent was to relieve the Land Office Department of the burden of settling the contro-

versies of various parties who might claim to own or be entitled to locate the scrip, it offers a fairly good reason for the proviso. Had the scrip been made assignable, the assignee would have been entitled to enter the land in his own name.

Were the scrip assignable, it opened an avenue for controversies over the scrip in the Land 859
Office that Congress doubtless did not care to burden it with. Were the scrip unassignable, it made it a very simple matter for the Land Department, as in no case could controversy arise over the title as it was to be always issued in the name of the half-breed. By this method the half-breed was sure of obtaining title in his own name to the land located under his scrip; by the same provision the government relieved itself of all responsibility beyond the mere clerical work of locating the scrip 860
in the name of the proper party. If controversies arose as to the ownership of the land after location of the scrip, the government was in a position to say (as Judge Otto said) "Such matters must be settled in court and not in the forum which I have created to determine to whom I shall first issue title to my public land; that question I have already determined in favor of the half-breed; my Land Department has no further jurisdiction in the matter; go to the courts to settle your differences." 861

Suppose that the provision of the Act of Congress had been as follows: "Provided, however, that in all cases of location of the scrip hereby authorized shall be in the name of the party originally entitled thereto, and title to the land acquired thereby shall be issued to such scripee," would not such a provision have been fully as effectual a prohibition of transfer or conveyance of the scrip as the one actually enacted? Such a provision as

supposed would have made the scrip unassignable but would not affect the right of the scripee to deal with the land itself as he saw fit.

Ordinarily what one may do in person he may do by attorney.

It will probably be conceded that had there
862 been nothing further in this case than a power of attorney to Eaton to locate the scrip, and had Eaton proceeded under such power to locate the land in question for and on behalf of Orillie Stram nee Moreau, and for her sole use and benefit, that such location would have been valid.

It is claimed, however, that by reason of the fact that another power of attorney was given to Merritt authorizing him to convey the lands ac-
863 quired under the scrip location made by Eaton in the name of Stram, and by reason of the fact that under the agreement the title to the land secured by the location of the scrip was not to enure to the benefit of Stram, the location of the scrip was invalid and therefore Stram acquired no legal right to the property; that the Land Office Department upon having the facts brought to its attention had the right, and it was its duty, to cancel such scrip location and to declare the land open for entry.

864 As has been pointed out, alienation of the land was not prohibited so that the claimed vice in the transaction—if vice there must be found in the power to locate given to Eaton together with the agreement that the scripee was to have no interest in the land when located. Was this transaction a conveyance or transfer of the scrip? If so, it was invalid. What could the scripee do with the scrip in person? Ask to have it located on certain

lands and title issue to her therefor. What she could do in person she could authorize her attorney to do for her. She could have obtained title to the land in controversy by applying in person; she did do it by attorney. Her attorney accomplished all that she could have done. What more can she or the Land Department ask? It is urged, however, that there was something more than this, viz: "She had conveyed the land itself or authorized its conveyance under the power of attorney to Merritt, therefore the location is invalid." 865

There being no restriction on her power to alienate, what prevented her from deeding any land she might acquire under her scrip or giving a power to convey when such location should be made? The plaintiff answers because the whole transaction was a mere device to avoid the prohibition of the Act against alienation of the scrip. She could not have conveyed or transferred the scrip directly and she cannot do it indirectly. Did she in effect transfer or convey her scrip to Eaton? The words "transfer and convey" signify a turning over,— a granting of a right held by the transferrer. 866

The prohibitory portion of the act did not forbid an ATTEMPTED transfer or conveyance; it inhibited the transfer or conveyance itself. What right did Eaton get in the scrip? Clearly none. As attorney in fact for Stram, he could locate it and claim title for her; she could do no more and so far as her rights in and to the scrip were concerned no change had taken place by reason of the various instruments executed by her. 867

Suppose that the transaction had been as follows: Orillie Stram and Eaton enter into an

agreement whereby Stram agrees to locate certain lands, Eaton agreeing to pay her $5,000.00 for all her rights in and to the scrip and for the land to be secured thereunder. Pursuant to said agreement Stram executes her deed or power of attorney to convey lands thereafter to be acquired and
868 delivers same, together with the scrip, to Eaton. The couple then proceed to the Local Land Office.

Stram takes from Eaton her scrip and asks to locate it on certain lands. The location is accepted and the scrip adjusted; thereafter a contest is initiated against the Stram location for the reason that under her agreement with Eaton she had in effect assigned her scrip and her going to the Land Office in person was a mere device to evade the provision of the law prohibiting the
869 transfer or conveyance of the scrip. Would such a contest be entertained for a moment? Would not the Land Department's answer be "She entered the land in person, exactly what she had a right to do; because she has sold the land or agreed to do so it is no concern of ours as there is nothing in the law prohibiting her from so doing."

If this is a correct answer on her personal application, is it not equally so upon her appli-
870 cation by attorney? The attempted transfer or conveyance of her scrip was not immoral, nor was the party to whom such purported transfer or conveyance was given a criminal. After the execution and delivery of all the documents evidencing the transfer of the scrip together with the delivery of the scrip itself she was as much the owner of the scrip as ever; the attempted transfer is simply ineffectual for any purpose.

Suppose that Orillie Stram had by written assignment on the scrip itself transferred and conveyed to Eaton the scrip in question, at the same time giving him a power of attorney to locate. Eaton presents the scrip and asks to have it located, exhibiting the writing thereon assigning and transferring the same to him. 871

He is met with the objection on the part of the Land Department that the scrip is unassignable and they cannot recognize the same. Certainly here is a plain case of assignment, but is there any penalty for it? Certainly not. Stram can still locate her scrip as she sees fit. If she walks in on the instant, she can immediately locate it on lands subject to entry. She is not penalised in any way. Suppose that Eaton after being met with a refusal to locate on the strength of the 872
written transfer, produces his power of attorney to locate for Stram. Will his application be accepted? Certainly. And why? For the reason that the location is in the name of Stram and title is issued to her,—just what the government contracted it would do. The pretended assignment was ineffectual for any purpose; of no force and effect and was of no more consequence as between any of the parties than if it had never been written. Suppose, however, that the Local 873
Land officers knew so little about the law that they had accepted the assignment of the scrip and located the same on lands selected by Eaton and issued to him the title as assignee of the scrip. Upon contest the Land Department pronounces the location invalid.

Clearly the department would be right for the reason that a transfer has been made and ac-

cepted and the prohibition of the Act of Congress violated thereby. Suppose that the Local Land officers had accepted the scrip on the assignment written thereon, but had issued the receipt showing the title to be in Stram. Would this be a valid location? Clearly not, for the reason that the attempted transfer or conveyance
874 gave no right or authority to the named transferree therein to do anything in or about the scrip.

There would be no authority for its location and it would therefore be invalid against the objection of a contestant whose rights were prejudiced thereby. In my opinion Stram had a perfect legal right to authorize Eaton to act as her attorney to locate the land. She had also the
875 right to sell the land to be acquired thereby and as an incident to the carrying into effect of such sale to give to Merritt a power of attorney to convey the lands acquired under such location. She was not obliged to go through the idle ceremony of coming to the Land Office in person, for she could do by attorney what she could do herself. The power of attorney to locate was not subject to explanation, it being regular on its face. She, and she alone, could question it. It
876 being unchallenged on her part, or thereafter ratified, all acts done under it were and are binding upon her and all others connected therewith. The case of Gilbert vs. Thompson, 14 Minn., page 414, is as I view it authority for this position, if it needs authority to justify it. The remarks of Justice Gilfillan are so applicable in many ways that I quote them IN EXTENSO.

"The Acts of Congress of 1854 on which Sioux half-breed scrip was

issued provides that 'No transfer or conveyance of any of said certificates or scrip shall be valid.' It was the intention of Congress that the right to acquire public lands by means of this scrip should be a personal right in the one to whom the scrip issued and not property in the sense of being assignable; but no restraint 877
is imposed upon the right of property in the land after it is acquired by location of the scrip. In the scrip itself the half-breed had nothing which she could transfer to another, but his title to the land when perfected under it was as absolute as though acquired in any other way.

It follows that any attempt to transfer the scrip directly or indirectly would be of no effect as a transfer. The title to the scrip would remain in him and the title to the land acquired by it 878
would vest in him just as though no such attempt had been made.

Such attempt to transfer would not involve any moral turpitude nor the breach of any legal duty as is the case with an attempt to transfer a pre-emptive right. It would be simply ineffectual because the scrip is not transferrable. A power of attorney, so far as intended to operate as a transfer, would be of no avail; the right of the half-breed in the scrip and land would 879
remain the same; it would not be made irrevocable nor create any interest in the attorney. Should the attorney sell under it, he would be accountable to his principal, precisely as in the case of any power to sell, but a simple power to sell executed by the half-breed is good till revoked and would extend to land subsequently acquired by means of scrip if such land came within its terms. We think such a power could

not be varied by parol proof that the parties had an intention not expressed in it even to defeat the power except on the same ground as will admit such proof in other cases. The intent to transfer the scrip not being illegal but only ineffectual could not affect the power
880 where not expressed in the same instrument or in one equal in degree as evidence."

The case of Felix vs. Patrick is relied upon as an authority favoring the plaintiff's contention in this case. It will be remembered that the plaintiff contends that the power of attorney to Eaton and the power of attorney to Merritt were a mere device to avoid the prohibition contained in the Act against the alienation of the scrip.

881 In the case cited, the Court says:

"The device of a blank power of attorney and quit claim deed was doubtless resorted to for the purpose of evading the provision of the Act of Congress that no transfer or conveyance of the scrip issued under such Act should be valid. This rendered it necessary that the scrip should be located in the name and for the benefit of the person to whom it was issued, but from the moment the scrip was located and the title
882 in the land vested in Sophia Felix, it became subject to her disposition precisely as any other land would be."

"In order, therefore, for the purchaser of this scrip from Sophia Felix to make the same available, it became necessary to procure a power of attorney or a deed for the land."

"As the bill alleges that Patrick obtained possession of these instruments, while still in

blank, he is clearly chargeable with notice that they were intended as a device to evade the law against the assignment of scrip."

"Having then no right to locate the scrip for his own benefit he must be deemed to have located it for Sophia Felix and as her representative."

883

THE FELIX vs. PATRICK CASE.

For the purpose of argument let it be conceded that the power of attorney to Eaton and the power of attorney to Merritt constituted a mere device for evading the prohibition against the transfer or conveyance of the scrip. Would not the result be, under the doctrine of Felix vs. Patrick, to place the title to the land in Orillie Stram?

884

The case of Felix vs. Patrick seems to assume that the LOCATION WAS VALID, but that the quit claim deed being a device to evade the prohibition of the Act of Congress was ineffectual and that Patrick would be deemed a mere trustee for Felix.

In the case at bar the power of attorney to locate it and of itself was a perfectly valid and legal instrument, not transgressing either in spirit or letter the prohibition contained in the statute.

885

How then can it be said that because the parties executed another and independent instrument which was intended to evade the prohibition that it rendered the first and otherwise valid instrument invalid? The land was located under a valid power, one not even subject to parol explanation (Gilbert vs. Thompson, 14 Minn., 414 Gil.). Title was obtained to the land under such scrip location in the name of Orillie Stram, nee

Moreau, all that the government ever contracted to be done. Who was injured?

Clearly not Stram because she gave the power to locate and affirms that she wanted the land. Certainly not the government for it had agreed to give Stram certain lands for the scrip and
886 and had carried out its agreement.

But the plaintiff urges that Stram had given a power of attorney to convey the land and had no further interest in it, therefore her location was invalid.

Under the doctrine announced in Felix vs. Patrick, giving it the most liberal construction that can be urged, the power of attorney to convey was invalid and of no force or effect and
887 without regard to what the parties intended or attempted to do the equitable title was still in Stram.

Suppose that the transaction in this case had been as follows:

Stram gave a power of attorney to Eaton to locate the scrip and at the same time by parol, agreed that as soon as the scrip was located he would give to Eaton a deed for the land so locat-
888 ed that the consideration for such parol agreement was the sum of $500.00 in hand paid, and that Stram under such parol agreement had agreed that she neither had nor claimed to have any further right, title or interest either in the scrip or to the land to be located thereunder. Pursuant to such agreement the scrip was located; upon contest it was made to appear that such parol agreement had been entered into between Stram and Eaton. Would it in any way invali-

date the scrip location which was made under a power regular upon its face?

Clearly the parol agreement had no effect for it was void under the statute of frauds and no evidence of it could be received. How could it affect the power to locate? Is there under the doctrine announced in Felix vs. Patrick any distinc- 889
tion to be drawn between an oral agreement to convey and one evidenced in writing so far as it affects the location of the scrip. The oral agreement is void for two reasons:

1st. The statute of frauds.

2nd. It being an attempt to evade the prohibition against alienation contained in the Act of Congress.

The written agreement is void for but one 890
reason, viz: The prohibition of the Act of Congress.

It is a rule so well known as to need no citation of authority that the valid act of parties will always be upheld and where an instrument contains provisions some valid and some invalid full force and effect will be given to the valid provisions and that those held invalid will be disregarded as of no force or effect,—treated as mere surplusage. 891

This rule of construction always obtains unless the valid and invalid provisions are so intimately related as to be incapable of separation in which case the whole instrument must fail.

In the case at bar we have:

1st. A power of attorney to Eaton to locate the scrip; standing alone its validity is conceded.

2nd. A power of attorney to Merritt to convey certain lands to be secured under the scrip location coupled with a parol agreement that the principal shall have no further interest in either the scrip or land.

It is apparent that after the scrip is located
892 in the name of the scripee that she has no further interest in the scrip. By the act of location the scrip becomes the property of the United States and its contract is cancelled.

Nothing then remains but the land. In relation to this the scripee has made an agreement (power of attorney) which is of no force or effect. Her attempt and Eaton's attempt to avoid the prohibitory portion of the Act of Congress are unavailing, the title still remaining under the
893 law in the scripee. She needs no protection for the law gives it to her fully and absolutely. The government needs no protection for it has given what it contracted to give. The scripee not needing the good offices of the government and the government not having been in any way imposed upon, the need for its services in the matter is at an end and it has merely the clerical duty of issuing to the scripee her patent in the usual course of business.

894 It is true the government might have said upon all the facts presented that "Stram and Eaton TRIED to avoid one of the provisions which I had made relative to the scrip which I issued to Stram, but owing to the law of the land as announced in Felix vs. Patrick, the attempt was a signal failure and I have no further interest in the matter. Stram has her land, the power of attorney to Merritt and the deed to Eaton to the contrary notwithstanding.

I have my scrip and the contract originally made by me is settled. This being so, I now relegate Orillie Stram to the courts in common with all other of my citizens."

In my opinion the location of the scrip by Eaton as attorney for Stram is valid.

THIRTY YEARS OF ACQUIESCENCE IN CONSTRUING THE ACT OF CONGRESS AS AUTHORIZING TRANSACTIONS OF THE SAME KIND AS THE ONE AT BAR. 895

From 1854 to 1886 no question was ever raised by the Local and General Land Office or any contestant as to the legality of locating scrip in the way it was done in the case at bar, except in the case of Felix vs. Carroll decided in 1863. In that case, as heretofore pointed out, it was held to be a valid location. 896

From 1863 to 1886 it never occurred to anyone to contest the scrip location on the ground of invalidity of the scrip location, although in practically every case the method adopted to locate the scrip was precisely the same as in the case at bar. The people generally,—lawyers and laymen, halfbreeds and Land Office officials,—all took the same view of it; thousands of titles are founded upon scrip locations made in exactly the same way. Is a construction to be now given at this late day which will overturn substantially all the scrip locations ever made under this act? If such a construction is to obtain it must be for very urgent and satisfactory reasons. Titles to our cities (Felix vs. Patrick, City of Omaha) our iron mines and agricultural lands are called in question though for thirty years no one ever dreamed of so doing. 897

Is not the claim a little stale? Who is harmed by holding the location good? Certainly not the plaintiff. It simply will not get something it hoped to get. If plaintiff paid the government anything or used other scrip in making this location it will receive the same back, if the government
898 was in error in accepting it and plaintiff will be placed in STATU QUO. Certainly not Stram for she affirmed all the acts of her attorney. The government is not harmed for it has neither been imposed upon nor defrauded. It received back its scrip for the land and has thereby cancelled its contract. If all other reasons fail it seems to me that it is the duty of the court to announce the rule "That this method of securing titles having been for thirty years so universally adopted hav-
899 ing been universally acquiesced in by lawyers and laymen, numberless titles being founded thereon, it is now too late to call the proceedure into question. It has become a rule of property and whether or not the common construction placed upon the act was right or wrong, it will now be acquiesced in by the courts, as irreparable injury would be done to thousands by holding such location invalid and no harm will be done to anyone by holding such location valid."

900 "The violation of the contract of 1854, if violation it was, has harmed no one. Plaintiff in this case is simply trying to take from defendants property acquired in good faith under a location made as thousands of others were. Their title by common consent was good at the time the location was made and it cannot now be questioned."

It seems to me that this rule is equitable and just and in the absence of all other reasons ought to be controlling. In my judgment the Hon. Sec-

retary of the Interior erred in holding such scrip location invalid. As a matter of law he should have awarded the land in controversy to Orillie Stram, nee Moreau.

As Orillie Stram, nee Moreau, has given a subsequent deed of the premises to Eaton and it is conceded that Eaton and his grantees hold 901
whatever title Orillie Stram, nee Moreau, may have had, it follows that the plaintiff's cause of action fails and that judgment should be entered in favor of the defendants.

It has accordingly been so ordered.

S. H. MOER,
Judge.

The original of the foregoing is endorsed on the back as follows:

15331. THE MIDWAY CO. vs. FRANK W. 902
EATON, ET AL.

JUDGE'S MEMORANDUM.

Filed in my office at 8 o'clock P. M., Dec. 30, 1899.

GEO. F. CHESTER,
Clerk of District Court.
By H. C. WEDMARK, Deputy.

903

STATE OF MINNESOTA, COUNTY OF ST. Louis, District Court, Eleventh Judicial District.

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904 THE MIDWAY COMPANY, A CORPORATION, Plaintiff.

vs.

FRANK W. EATON, LEONIDAS MERRITT, MERRILL M. CLARK, RICHARD H. FAGAN, AND MARGARETHA LONSTORF, Defendants.

905

JUDGMENT.

This cause having come on for trial at the General May, 1899 Term of said Court, before Hon. S. H. Moer, one of the judges of said court, presiding without a jury.

906 Messrs. Walter Ayers and P. H. Seymour, appearing as attorneys for the plaintiff; and Messrs. J. L. Washburn and W. D. Bailey appearing as attorneys for the defendants Clark and Fagan and Merritt; Mr. W. B. Phelps appearing as attorney for the defendant Lonstorf and Messrs. Towne & Harris and Frank Cutting appearing as attorneys for defendant Frank W. Eaton, and the cause proceeding regularly to trial and the respective parties having produced their

evidence before the Court and thereafter the cause having been duly argued by the attorneys for the plaintiff and defendants, and the Court being fully advised in the premises having made and filed its findings of fact and conclusions of law in said matter on the 27th day of December, 1899.

NOW THEREFORE, On motion of all of the 907
above named attorneys for the defendants, it is hereby ordered, adjudged and agreed as follows:

1. IT IS ADJUDGED, DETERMINED AND DECREED that the defendant, Frank W. Eaton, is the owner of an undivided thirteen thirty-sixths (13-36) of the premises described in the complaint, to-wit: Lots No. three (3), five (5) and six (6) of section thirty (30) in township sixty-three (63) north of range eleven (11) west, of the fourth 908
principal meridian in the County of St. Louis and State of Minnesota; that the defendant Merrill M. Clark is the owner of an undivided nine thirty-sixths (9-36) of said premises; that the defendant Margaretha Lonstorf is the owner of an undivided eight thirty-sixths (8-36) thereof and the defendant Richard H. Fagan is the owner of an undivided six thirty-sixths (6-36) thereof, and said parties were entitled to have and receive patent therefor from the government of the United 909
States.

2. IT IS FURTHER ADJUDGED, DETERMINED AND DECREED, That the plaintiff is not entitled to any right, title or interest in or to said lands or any of them, and that the plaintiff's predecessor, one Frank Hicks, to whom patent issued therefor from the United States was not entitled to have and receive said patent and that whatever title accrued thereby was at most the

bare legal title, subject to all of the rights and interests of said defendants hereinbefore named, and that said Frank Hicks held said title as trustee in trust for the said several defendants, and that the plaintiff, who has succeeded to whatever legal title the said Hicks acquired by virtue of said
910 patent, with full knowledge of the rights of said defendants, holds the same in trust for the said several defendants in the proportions hereinbefore decreed; and,

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, That the said plaintiff having no other right, title or interest in or lien upon said premises, convey said premises to the said defendants in the proportions above decreed, failing so to do, that this judgment shall operate to ef-
911 fectually transfer and vest whatever title is held by said plaintiff, accruing by virtue of said patent, in the said several defendants in the proportions above specified, upon the recording of a certified copy hereof in the office of the Register of Deeds of the County in which said land is situated; and,

IT IS FURTHER ADJUDGED, DETERMINED AND DECREED, that the defendants are the owners of both the legal and equitable title
912 to said premises in the proportions hereinbefore specified and that the plaintiff has no right, title or interest therein.

3. IT IS FURTHER ADJUDGED, DETERMINED AND DECREED, That the said defendants, Eaton, Clark, Fagan and Lonstorf have and recover of and from the said plaintiff their costs and disbursements herein taxed at $61.00.

Witness the Honorable S. H. Moer, Judge of the District Court aforesaid, at Duluth, this 2nd day of January, in the year of our Lord, 1900.

GEORGE F. CHESTER,
Clerk.

By A. J. TAYLOR,
Deputy Clerk. 913

STATE OF MINNESOTA, COUNTY OF ST. Louis. District Court, Eleventh Judicial District.

THE MIDWAY COMPANY, Plaintiff, 914

vs.

FRANK W. EATON, LEONIDAS MERRITT, MERRILL M. CLARK, RICHARD H. FAGAN, AND MARGARETHA LONSTORF, Defendants.

NOTICE. 915

To Messrs. Washburn, Lewis & Bailey, L. C. Harris and Frank Cutting, and Phelps & McClintock, attorneys for the above named defendants, and to George F. Chester, Clerk of said District Court:

PLEASE TAKE NOTICE, That the above named plaintiff, The Midway Company, appeals to the Supreme Court of the state of Minnesota, from the order of the said District Court entered herein on the 28th day of December, A. D. 1899, denying plaintiff's motion for a new trial, and also from the judgment entered herein against the said plaintiff on the second day of January, A. D. 1900, and from the whole thereof.

Dated this 3rd day of January, A. D. 1900.

WALTER AYERS,
Attorney for Plaintiff.

P. H. SEYMOUR,
Of Counsel.

Filed Jan. 3, 1900.

Due and personal service of the within notice of appeal and undertaking accompanying same is hereby admitted at Duluth, Minn., this 3rd day of January, A. D. 1900.

J. L. WASHBURN AND
W. D. BAILEY,
Attorneys for Merritt, Clark and Fagan.

L. C. HARRIS AND
FRANK CUTTING,
TOWNE & HARRIS,
Attorneys for F. W. Eaton.

PHELPS & McCLINTOCK,
Attorneys for Margaretha Lonstorf.

GEORGE F. CHESTER,
Clerk of District Court, St. Louis Co.

307 STATE OF MINNESOTA, } ss:
County of St. Louis, }

In District Court, 11th Judicial District.

THE MIDWAY COMPANY, Plaintiff,
vs.
FRANK W. EATON, LEONIDAS MERRITT, RICHARD M. FAGAN, and Merrill M. Clark, Defendants.

Comes now the defendant Frank W. Eaton and, answering the complaint of the plaintiff herein for himself alone, denies each and every allegation, matter, and thing in said complaint contained save and except as the same is hereinafter admitted, qualified, or explained.

2. This defendant denies that the plaintiff is the owner of the lands described in the complaint or any part thereof, or has any right, title, or interest in the same, and denies that the plaintiff is in the possession of the same or any part thereof.

3. This defendant admits that the lands described in said complaint are in the county of St. Louis and State of Minnesota.

4. This defendant admits that he claims an interest in said lands and alleges the fact to be that he is the owner of thirteen-thirty-sixths undivided interest in the premises described in said complaint, and upon information and belief alleges that Merrill M. Clark is the owner of nine-thirty-sixths, Margaretha Lonstorf of eight-thirty-sixths, and Richard H. Fagan six-thirty-sixths of said premises described in the complaint.

5. This defendant, further answering said complaint, both by way of defence and for affirmative relief, alleges the foundation and basis of his right and title to said premises hereinbefore described to be as follows, to wit:

308 That on the 17th day of July, 1854, the Congress of the United States passed an act entitled "An act to authorize the President of the United States to cause to be surveyed a tract of land in the Territory of Minnesota belonging to the half-breeds and mixed bloods of the Dakota — Sioux nation of Indians, and for other purposes," by which act the President of the United — was and became authorized to exchange with the half-breeds and mixed bloods of the Dakota or Sioux nation of Indians, who were entitled to an interest therein, for the tract of land lying on the west side of Lake Pepin and Mississippi river, in the then Territory of Minnesota, which had been theretofore set apart and granted for their use and benefit by the ninth article of the treaty of Prairie du Chien on the 15th day of July, 1830, and for that purpose by the said act the President of the United States was authorized to cause to be issued to the said persons, on the execution by them or by the legal representatives of such as were minors, of a full and complete relinquishment to the United States of all their right, title, and interest, according to such form as should be prescribed by the Commissioner of the General Land Office, in and to said tract of land or reserva-

tion, certificates of scrip of the amount to which each individual would be entitled of said land or reservation, *pro rata*, among the claimants, which said certificates or scrip it was by said act provided might be located upon any of the said lands within said reservation not then occupied by actual, *bona fide* settlers of the half-breeds or mixed bloods, or such other persons as had gone into said Territory by authority of law, or upon any other unoccupied lands of the United States subject to pre-emption or private sale, or upon any other unsurveyed lands not reserved by the Government upon which they respectively should make improvements—

It being further provided in said act that said certificates or scrip should not embrace more than 640 nor less than 40 acres each,
309 and that the same should be equally apportioned, as nearly as practicable, among those entitled to an interest in said reservation; that it was further provided in and by the terms of said act that the President was authorized to cause to be ascertained the number of the half-breeds and mixed bloods who were entitled to participate in said grant or reservation, and to issue the scrip or certificates provided for in said act; that the said act of Congress was approved July 17th, 1854, and became of force on and after said date, and the same is codified and published in the tenth volume of the United States Statutes at Large, on page 304, and is hereby made a part of this complaint as fully and in all respects as though the same were set forth at length.

6. That, pursuant to the provisions of said act, the President of the United States caused the number and name of the said half-breeds and mixed bloods who were entitled to participate in the benefits of said grant or reservation to be ascertained, and the said persons so entitled to the benefits thereof duly executed a full and complete relinquishment to the United States of all their right, title, and interest, in the manner prescribed by the Commissioner of the General Land Office, in and to said tract of land or reservation, and the said tract of land or reservation thereby became fully relinquished to the United States Government, which proceeded to open up the same for settlement in accordance with the public land laws of the United States.

7. That in consideration of said relinquishment to the United States by the said persons entitled to the benefits of the said reservation, and of all their rights, title, and interest therein, to the United States, pursuant to the provisions of said act, the President of the United States caused to be issued to the several persons entitled to the benefits of said act certificates or scrip for the same
310 amount of land to which each of such persons was found to be entitled in case of a division of the said grant or reservation, which said certificates or scrip were, under the provisions of said act, locatable upon any of the lands within said reservation not then occupied by actual settlers of the classes mentioned in said act, or upon any other unoccupied lands of the United States subject to pre-emption or private sale, or upon any other unsurveyed lands not reserved by the Government upon which they should respectively make improvements.

8. That one of the persons entitled to the benefits of said act and who joined with others of her nation in surrendering to the United States all her right, title, and interest in and to said reservation, and who executed due and proper relinquishment thereof, was one Orille Moreau, a half-breed of the said nation, who afterwards intermarried with one Roman Stram.

9. That under and by virtue of said act of Congress the said Orille Moreau became entitled to certificates of scrip enabling her to take 320 acres of land of the classes mentioned in said act, and that on or about November 23, 1856, certificates of such scrip were duly issued to her, numbered 19 E and 19 D, each of said certificates being for 160 acres.

10. That on June 16th, 1883, the said Orille Moreau, then Orille Stram, never having theretofore made any use of said certificates or scrip, through this defendant, Frank W. Eaton, who had been theretofore duly empowered as her attorney-in-fact for that purpose, presented said scrip at the local land office at Duluth, Minnesota, and then and there made application to locate the same on certain unsurveyed lands in the said land district, and by virtue of said application and said certificates of scrip did enter and take the following-described lands, to wit:

311 Starting at the quarter post on the east line of section 25, township 63 north, of range 12 west, and thence running east 240 rods for a place of beginning, thence south 80 rods, thence east 80 rods, thence north 80 rods, thence east 80 rods, thence north 160 rods, thence west 80 rods, thence south 80 rods, thence west 80 rods, thence south 80 rods to the place of beginning, the same being located under scrip number 19 E; also commencing at the quarter post on the east line of section 25, in township 63 north of range 12 west, running thence north on said section line 80 rods, thence east 80 rods, thence north 80 rods, thence east 80 rods, thence south 80 rods, thence east 80 rods, thence south 80 rods, thence west 240 rods to the place of beginning, the same being located under scrip number 19 D, each of said locations embracing 160 acres, the same not being lands reserved by the United States for any purpose whatsoever. The said scrip and the said applications, together with complete and correct diagrams and descriptions of the proposed locations, were filed in the local office on the 16th day of June, 1883, and were duly accepted by the local land officers, and prior to the location of the said certificates of scrip substantial improvements had been made upon each of said pieces of land by and under the authority and for the benefit of the said Orille Stram, and she in all respects fully complied with the provisions of said act of Congress in locating said certificates of scrip on the premises hereinbefore described.

11. That on or about the 20th day of July, 1885, said lands having been duly surveyed and platted, the plat and survey of the said township and of said lands was duly filed in the local land office at Duluth, Minnesota, and on the 21st day of July, 1885, upon the application of the said Orille Stram, acting through her duly appointed attorney-in-fact, said certificate of Sioux half-breed

scrip number 19 D was adjusted to lots three (3), five (5), and six (6),
and the southeast quarter of the northwest quarter of section
312 thirty (30), in township sixty-three (63) rorth of range eleven
(11) west, and said certificate number 19 E was adjusted upon lots one (1) and two (2) and the southwest quarter of the northeast quarter and the northwest quarter of the southeast quarter of section 30, township 63 north of range 11 west, being the same lands hereinbefore described by metes and bounds, and then and there and on that day said certificates of scrip were duly located upon said surveyed lands, and the said lands as surveyed lands were duly taken and appropriated under and by virtue of said scrip, and the locations of said scrip were at said time duly and properly allowed by the officers of the local office at Duluth, Minnesota, there not being at said time nor at the time when said certificates of scrip were located on said unsurveyed lands nor at any other time any valid adverse claims to said lands, and on the said 21st day of July, 1885, receiver's receipts and certificates of entry and filing were duly and regularly issued to the said Orille Stram, which were duly and regurlarly recorded in the office of the register of deeds where the said lands are located, and have ever since remained of record therein.

12. And this defendant alleges the fact to be that thereupon the said scrip became satisfied and the obligations of the United States, in consideration of the surrender by the said Orille Stram of her interest in said reservation and in said certificates of scrip, became discharged, and the said lands taken and located under said scrip became the property and estate of the said Orille Stram and those claiming by, through, or under her, without regard to the issuance of any patent by the Government of the United States.

13. That about the time of the adjustment of the said scrip to the said lands to the satisfaction and extinguishment of said scrip one Thomas Hyde made an application to make a pre-emption filing
upon lots 5 and 6 and the southeast quarter of the northwest
313 quarter of said section, which application was denied by the
local officers at Duluth, Minnesota, and on or about the same time one Angus McDonald made a like application on lot two (2) and the north half of the southeast quarter and the southwest quarter of the northeast quarter of said section, which application was also denied by the local officers, both on the grounds that said lands had already been appropriated by the location of the said scrip thereon, and also that the applications of the said Hyde and McDonald were not made in good faith, but were made in fraud and in violation of the pre-emption laws and were affected by a fraudulent and unlawful intent, rendering the same invalid, and that it was duly determined by the local officers, and sustained by decision of the department, that neither the said Hyde or McDonald ever had or obtained any rights whatsoever in or to the said lands by virtue of said pre-emption filings or by virtue of any subsequent proceedings on their part or either of them; but that, notwithstanding the same, the said Hyde and McDonald made and attack upon the Land Department some time in November, 1885, upon the location of the said certificates of scrip and on the entry of the said

lands thereunder, charging that the said Orille Stram had never made any improvements upon said lands, either in person or by agent and attorney, and that the same at the time of the first filing thereof, as hereinbefore set forth, were unsurveyed lands and could be located only after such improvements had been made, and supported the same by an affidavit which had by misrepresentation been obtained from the said Orille Stram, in which she denied giving such power to this defendant, Frank W. Eaton, or any authority to locate the scrip or erect buildings or make improvements on the lands in controversy or any land for her use and benefit, which charges culminated in a hearing thereon in the local office at Duluth, Minnesota, on the 6th day of April, 1886, resulting

314 in a decision of the said land officers sustaining the said scrip locations, in which decision the local land officers held, among other things—

That the scrip in question was located upon unsurveyed lands on June 16th, 1883, more than one year before the pre-emptors Hyde and McDonald settled thereon, and was adjusted to the surveys July 21, 1885.

That the records contained duly executed powers of attorneys from the scripee and her husband to this defendant, Frank W. Eaton, giving him full power to do all things necessary to secure *bona fide* locations of the said scrip.

That this defendant, Eaton, under said authority employed another to go upon the land and make suitable improvements, giving instructions what improvements to make and how to make them, which improvements were made for this defendant and for the purposes claimed by him.

That the said scripee, while stating in said affidavit that she did not know this defendant and never authorized him to make improvements on the lands, did not appear at the hearing to testify in support of the charges made, and that she never asked that the locations be cancelled and the scrip be returned to her, but, on the contrary, between the date of said affidavit and day of hearing, executed and delivered a deed of confirmation, acknowledging, ratifying, and confirming all that had been done by this defendant as her attorney.

And further decided that there was nothing in the evidence to show that the scripee was mislead or imposed upon by this defendant or his agents, nor to controvert the fact that the scrip locations were effected in conformity with the usual and accepted practice in such cases, and in accordance with the law and the rules of the Land Department, and held that the contestants had failed to make out a case, and that the scrip locations should stand.

From that decision contestants Hyde and McDonald appealed to the General Land Office, assigning six specifications of error;

315 among others, that the local officers had treated the case as if the controversy was between the scripee and her attorney-in-fact, whereas it grew out of a contest by third parties, and that the local officers had failed to pass upon the question whether the land contained improvements made by or under the personal supervision

or direction of the scripee and for her personal use and benefit, and erred in finding that a confirmatory deed made between two of the parties could bar the right of subsequent *bona fide* applicants.

Pending said proceedings on appeal other parties made application to contest the said scrip locations and also to contest the preemption claims of said Hyde and McDonald, which, under the instructions of the Commissioner of the General Land Office, in August, 1887, were held subject to the final disposition of said appeal.

That upon said appeal said Commissioner made his decision and found that accompanying the scrip and said applications to locate the same were two original powers of attorney, given May 25, 1883, by the scripee and her husband to this defendant, and that with each application was an affidavit by this defendant setting out that under said powers of attorney he had caused to be built upon each of the tracts upon which scrip was located a house fourteen by sixteen feet, one story high, of timber, covered with split shingles, with doors and windows; that he had also cleared half an acre of each tract, and that said improvements were made under the personal direction of said scripee and for her personal use and benefit; and further decided that in the record there was an original power of attorney given by the said scripee and her husband to one Leonidas Merritt, granting him full power and authority to enter upon and take possession of any and all pi-ces of land in the State of Minnesota which they owned or might thereafter acquire by virtue of the location of the scrip in question, and to prosecute and defend
316 any suit at law in the courts of said State, and to grant, bargain, sell, demise, or lease the said lands in the same manner as if performed by them individually.

And further decided that in the record were certified copies of warranty deeds, dated July 2nd, 1883, executed by said Leonidas Merritt in the name of the said scripee and her husband, under and by virtue of the power of attorney above named, conveying to Edward Byrns, Joseph A. Powers, and Edward Clement an undivided one-third interest in and to the lands embraced in said scrip locations involved in said controversy, the consideration stated in said deed being $25,000; also certified copies of two warranty deeds, dated July 6, 1883, executed in the same manner by the same party, conveying to this defendant an undivided two-thirds interest in and to said tract of land, the consideration named in each being $25,000; also that Joseph Clement, the grantee of an undivided third interest, above mentioned, on August 23, 1883, as appears by certified copies of two deeds of warranty on file, conveyed to one Nicholas Lonstorf his undivided one-ninth interest in and to said tracts, the consideration named being two hundred and fifty dollars, and that on August 29th, 1883, as shown by certified copies on file, Joseph Powers, another of the grantees of an undivided third interest, executed two similar deeds, conveying to said Lonstorf his undivided one-ninth interest in and to said tracts, the consideration named being three hundred and fifty dollars in each deed; and also that the record contained quitclaim deeds correcting faulty descriptions in said previous deeds, said decision holding that a two-ninths in-

terest under said scrip locations had vested in said Lonstorf, one-ninth in Edward Byrns, and six-ninths in this defendant, Frank W. Eaton.

The said Commissioner further decided that said several deeds of conveyance conferred no greater title upon the grantee than the grantors had, which he held was simply a right to these tracts
317 of land subject to the final adjudication and approval of the loations; said Commissioner also found that prior to the hearing before the local land office, on March 31st, 1886, the scripee, Orille Stram, and her husband joined in a deed of confirmation ratifying and confirming all the acts of this defendant and Leonidas Merritt relative to acquiring the said lands under and by virtue of said certificates of scrip.

The said Commissioner further determined in said decision that the record before him established by a clear preponderance the fact that this defendant, by virtue of his power of attorney, employed Edward Byrns to — the improvements upon the respective tracts in question, and that Byrns procured the services of Powers and Clement to assist him therein; that this defendant admits that the power of attorney under which he acted was executed by the said scripee in blank, and that he had never seen the said scripee until March 31st, 1886; that he had not himself seen the land and did not know whether the scripee had seen it or not; that the deed of confirmation of the scripee appears, so far as she and this defendant are concerned, to remove any objection to the acts previously performed by the latter under and by virtue of the said power of attorney, and that the affidavits accompanying the location of said scrip appear to fulfill the requirements of the circular of May 28th, 1878, as printed in 5 Copp's Land-owner, 126.

The said Commissioner further decided in said decision that the only question left to pass upon touching the legality of said scrip locations was whether the power of attorney given by said scripee to this defendant could carry with it under the law the power and authority to make the improvements necessary as a prerequisite to valid location of the scrip on unsurveyed lands, and held that since the evidence showed that the scripee never saw the lands or the improvements, and since the circular above referred to required that the Indian should have direct connection with the land and
318 claim the same for his personal use, that the scrip locations were not valid and should be cancelled as speculative and made with evident intent to evade the law rather than to comply with it.

That an appeal was taken to the General Land Office, to the Secretary of the Interior, on or about August 4th, 1888, by said Orille Stram and this defendant, her attorney-in-fact, and the said parties in interest, it being assigned as specifications of error on said appeal, among other things, that the said Commissioner erred in holding that there was any failure in manner, form, or substance on the part of the scripee in locating said scrip or in making the improvements required on unsurveyed lands by the act of Congress approved July 17th, 1854, and in holding that improvements on unsurveyed

land subject to appropriation under said act must be made under the personal supervision and direction of the scripee and be for his personal use and benefit, and in holding that said acts of settlement and improvement may not be made by or through an agent or attorney, and in holding that the adjustment to the lines of the public surveys of a scrip location theretofore made by an agent of the scripee on unsurveyed lands, tho' assented to and ratified by the scripee, does not constitute a valid appropriation of the tract, and in not finding and holding that at the time of the adjustment of the said scrip to the lines of the public survey no valid right had attached to said land adversely to said scrip, and in not holding that at the date of said adjustment no right adverse thereto had attached to said land, and said adjustment was in legal contemplation and intent a location on surveyed land, and hence that no improvements were required as a condition precedent to a valid location, and in holding said scrip locations for cancellation, and *and* for failure to find and decide the questions in issue, both in law and fact, in favor of the title of the scripee.

That thereafter, on the 18th day of February, 1889, the
319 Hon. W. F. Vilas, then Secretary of the Interior, decided said cause on appeal, and held that the said scrip locations were invalid, which decision was afterwards, on the 28th day of January, 1891, confirmed by the Hon. John W. Noble, then Secretary of the Interior, it being also determined in the decisions of both Secretaries that neither Hyde nor McDonald nor any other person or persons had any right, title, or interest in or to said land or any part thereof, and assumed to determine and decide that the said lands were still public lands of the United States and open to entry.

That Secretary Vilas in and by the said decision held that the said scrip, being accompanied by two powers of attorney executed in blank, one giving to some one then not named power to locate the scrip, and the other giving like authority to sell the lands which might be located thereunder, operated as an assignment of the scrip, and assumed that the same, after many years passing through different hands, lodged in the hands of this defendant, who filled up the blanks in the powers of attorney and employed other- to make improvements on the land, and located the scrip as the attorney-in-fact of Orille Stram, and that the other power of attorney was filled out in the name of Leonidas Merritt, as the attorney-in-fact who executed the conveyances; that the scripee never saw the land and had not seen the same at the time this defendant located said scrip, nor had she ever seen this defendant at said time, and assumed the fact that she had sold the said scrip long prior to the location, and held that she had no interest in the land, and that her actual interest in the land ceased when she disposed of the scrip, which said Secretary assumed that she did when she executed said powers of attorney.

That said Secretary in said decision found that said Orille Stram, her husband joining, had ratified what had been done by
320 her said attorneys-in-fact, and found or assumed that said ratification was for a consideration, and held that such con-

firmation did not change the fact that the improvements and location, although made under the said power of attorney, were under the direction and in the interest of the said scripee, but in the interest of the acquisition of the land and in the interest of those who desired to acquire it through said scrip.

That in the decision of Secretary Noble above referred to, confirming the decision of Secretary Vilas, the case was not gone into in detail, Secretary Noble affirming the position taken by Secretary Vilas, and also affirming the decision of Secretary Vilas that no other parties had acquired any valid, adverse right whatsoever in and to said premises.

15. That said decisions of the said Secretaries rested upon a mistaken and erroneous interpretation of the law under which said scrip locations were made; among others, in this, that the power of attorney under which this defendant acted as the attorney-in-fact for Orille Stram in making said scrip locations and in filing said scrip and in entering said lands was in blank, in so far as the donee in said power was concerned, when first executed by the said scripee, and hence void; that the improvements made upon said lands in connection with the first filing of the scrip thereon were not made by Orille Stram in person or for her personal benefit and enjoyment, and that she had no personal connection with said land, and hence that the location of the said scrip on the said land was unlawful and invalid; that prior to the location of said scrip upon said land said Orille Stram had executed a power of attorney, to wit, to the said Leonidas Merritt, to sell and convey the lands which might be obtained under said scrip, and hence that by means of the two powers of attorney, the one to locate and the other to sell, an
321 assignment of the said scrip had been effected, contrary to the provisions of the statute, and hence that all proceedings had under the said powers of attorney to locate said scrip were invalid, notwithstanding that the said Orille Stram had thereafter in all respects confirmed the said acts of this defendant as her attorney-in-fact; that this defendant, prior to the location of said scrip, had not seen the said Orille Stram and did not know whether she had been upon the land personally or not, and hence that the location of the land in her name and under said scrip was invalid; that said decision rested upon an erroneous and unsupported assumption of fact that said certificates in the name of Orille Stram were disposed of by her under the two powers of attorney, the one to locate and the other to sell, and executed by her in blank, which after many years, passing through different hands, lodged in the hands of this defendant, who filled up the power to locate the same with his own name and empowered other persons to make slight improvements on the land, and thereupon located the scrip as the attorney for Orille Stram, and afterwards filled or caused to be filled the blank in the other power of attorney with the name of Leonidas Merritt, and that Orille Stram did not know at the time of the said acts of this defendant, whereas in truth and in fact there was nothing in the records of the said case, as the same was made before and presented to the said Secretaries, to justify

such conclusions and assumptions of fact, and whereas the same was and is contrary to the actual facts appearing in the record of said case, and whereas said conclusions and interpretations of law, as aforesaid, were erroneous, mistaken, and wrongful and contrary to the interpretations of law as made in numerous decisions of the Land Department and courts of the United States, the true facts being, as established in said record without contradiction, that the said Orille Stram did not make a sale of said scrip and never made any assignment thereof, and that shortly and but a few days before the
322 filing of said scrip upon said lands, and desirous of obtaining lands that she might have the benefit thereof and sell and dispose of the same after she should obtain the same and receive the benefits thereof, she executed and delivered said power of attorney under which this defendant acted in making said locations and under which he acted in making the improvements upon said lands, which improvements, this defendant alleges, were good and substantial improvements and in all respects complied with the law, as found by the local land officers, and that they were made for the purpose of acquiring said lands in the name of Orille Stram, to be disposed of, if she so desired, by her or under her authority, after the same should be so obtained; that the interpretation of the law by the said Secretaries that the said improvements had to be made in person or under the personal direction of or for the personal use and benefit of the scripee was erroneous, such law only requiring that as to unsurveyed lands improvements be made to the end that the same should be notice to other parties that claims had been made to such lands under such scrip, to prevent others from innocently entering upon said lands and making settlement thereon in ignorance of the claims of said parties under said scrip locations and to put all such persons on guard, that in truth and in fact it was immaterial whether such improvements were placed upon said lands by the scripee or some one in her behalf, for the reason that the full demands of the law are met when improvements are placed on such lands, whether placed thereon by the scripee in person or some one in her behalf.

16. Further, this defendant alleges that it was entirely immaterial whether the name of the donee in said power of attorney was filled in at the time of the first execution thereof or not, inasmuch as the said power of attorney, as was shown without dispute, was delivered to this defendant by the said Orille Stram, through
323 her agents, for the purpose of making said locations in the name of said Orille Stram, from which locations and the sale of the lands thereafter she expected to derive a consideration, and inasmuch as said locations are, in fact, made in her name, and inasmuch as said certificates of scrip were duly located in the name of Orille Stram, by this defendant acting as her attorney, the said Stram, by virtue of said acts, became, in law, the owner of said lands to the same extent as though she had taken all such steps in person.

Further, that at the time of the location of said scrip upon said lands, on July 21st, 1885, the plat of the survey of said township had

been made and filed, and there being, at that time, no valid adverse claims to said lands or any part thereof, no improvements whatsoever were required to render valid the location of said scrip upon said lands; and it should have been, by the said Secretaries, held, as in fact the law is, that such entry and such location of said land was in all respects valid, without regard to any improvements whatsoever, as there had been no intervening rights of any person or persons whatsoever between the time the said scrip was located on said lands as unsurveyed lands and the time the said scrip was finally adjusted to said lands.

That it was error to hold and so construe the law that in case the said Orille Stram desired to sell said lands, after they should be obtained, in order to derive the benefit from said sale to which she was entitled under the said certificates, for which she had theretofore paid the United States by the surrender of her rights, as aforesaid, in and to said reservation, that it was invalid for her to execute a power of attorney, whether in blank or otherwise, to sell the said lands, after the same should thus be located, even before the said scrip was filed upon said lands; and it was an erroneous interpretation of the law on the part of said Secretaries, and contrary to
324 the *the* previous rulings and practice of the Land Department, to hold that by said transactions a sale and assignment of the scrip was effected, or to hold that the acts of the said attorney-in-fact, this defendant, in the location of said scrip, by reason of said acts on the part of Orille Stram, were invalid, inasmuch as the said scrip, by the said attorney-in-fact, was located upon said lands, and the said lands were taken in the name of the said Orille Stram and subject to her disposal.

That the said decisions and interpretations of the law by the said Secretaries in holding that the said improvements were not made in the interest of the said scripee were erroneous in that the same *being* made in the interest of the entry of said lands for and in the name of the said scripee, and the locations of the said scrip thereon were in law made for the benefit and in the interest of said scripee and in support of said entry, and the law does not require said scripee to make the same in person, nor that the same be made for her personal use, nor that she should have direct connection with the land.

That the decisions of the said Secretaries in holding that after said scrip had been located upon said lands in the name of the said scripee the deed of confirmation thereof given by the said scripee, her husband joining, which was given to this defendant on or about March 31st, 1886, was ineffectual, were erroneous and based upon a mistaken construction of the law, inasmuch as said lands having been entered in the name of Orille Stram, whether the said power of attorney to sell the same was invalid or not, became immaterial, for the said scripee herself, as found by said decisions, confirmed the acts of the said attorney-in-fact to sell and convey said lands, and conveyed the same herself to those who were claiming thereunder; and erroneous further in this, that it was entirely competent and

lawful for the said scripee to act by and through another as
325 her attorney in the selection and location of said lands, and that if said power of attorney to sell and dispose of the same was invalid the said lands still remained the property of the said scripee until she executed and delivered said confirmatory deed, and up to the time of said decision no valid adverse claim attached to said lands.

17. That under and by the erroneous decisions of the said Secretaries it was attempted to throw said lands open for pre-emption or for the location of other scrip as public lands of the United States, and that by virtue of said erroneous decisions the Land Department of the United States assumed to allow, subsequent to the rendition of said decisions, other parties to come in and apply for the said lands, notwithstanding the fact that during all of this time this defendant and his codefendants were in possession of the lands on which said scrip had been located and all of the same when such proceedings were had pursuant to said erroneous decisions of said Land Department, to which said proceedings neither this defendant nor his co-defendants were parties.

After the decisions of the said Secretaries denying the validity of the said scrip locations, but the exact time of which is to defendant unknown, the Land Department of the United States, as defendant is informed and believes, pretended to allow one Frank Hicks to enter the lands described in the complaint, and thereafter, as defendant is informed and believes, issued a patent to the said Hicks for the said lands; but defendant alleges that he was not a party to any of the proceedings whereby the said Hicks was permitted to enter and obtain said lands, and further alleges that no right, title, or interest in and to said lands passed to the said Hicks by the said
326 pretended acts of the Land Department; and this defendant further alleges upon information and belief that the plaintiff obtained its pretended title to the lands mentioned in the complaint from the said Hicks.

18. Defendant further alleges that after the filing and location of the said scrip and the adjustment thereof to the said lands neither the Land Department of the United States nor any of its officers had any jurisdiction whatsoever to deal with said lands or to dispose of the same, or to throw them open to public entry by other persons or do any act in connection therewith, except it be to cause a patent therefor to issue for said lands to the said Orille Stram, and alleges the fact to be that by the terms of said grant and the said act of Congress, as hereinbefore set forth, and the practice of the department then in vogue, the title to said lands had actually passed to the said Orille Stram as effectually as tho' a patent in form had been issued therefor to the said Orille Stram, and that in truth and in fact the said Orille Stram and those claiming under her thereupon became the owners of the title to said lands, both legally and equitably, and alleges that the patent issued to the said Frank Hicks and the entry upon which said patent was issued were erroneously allowed, and the same were allowed and issued without warrant or authority of law, and that if it should be held that the said Hicks

and those claiming under him took any title whatsoever to said premises under said patent that at most it could be but the bare legal title thereto, held in trust for the benefit of the owners of the equitable title to said lands, and that this defendant and his codefendants as the owners of the equitable title to said premises are entitled to a conveyance of the legal title to said lands in question.

And this defendant further alleges that he has been in possession of said lands by and through his agents for the past fourteen years, and has claimed to own said lands during all of said time
327 under and by virtue of the said conveyances of said premises from the said Orille Stram to this defendant, the deeds of which conveyances have been of record in the office of the register of deeds in the county where said premises are located for more than thirteen years last past; and defendant further alleges that the said plaintiff and all other persons hereinbefore mentioned under whom it claims have at all times had knowledge of the rights, interest, and ownership of the defendants herein, and especially of this defendant, and that the said plaintiff has had knowledge of the possession of this defendant by and through his agents.

Wherefore this defendant prays the court;

1. That the plaintiff take nothing by this action.

2. That it be adjudged that the plaintiff has no right, title, or interest in or to said lands or any part thereof or lien thereon.

3. That it be adjudged, determined, and decreed that the defendant Frank W. Eaton is the owner of thirteen-thirty-sixths undivided interest in the premises described in the complaint, and that he is the owner of both the legal and equitable title thereto.

4. That it be adjudged, determined, and decreed that the title which the said Frank Hicks obtained by the issuance of the patent to him for said premises, as hereinbefore set forth, was the bare legal title, and that the said legal title has been *in* held in trust by the said Frank Hicks and the plaintiff herein claiming under him for *for* these defendants, and that the said plaintiff be adjudged, ordered, and decreed to convey all its right, title, and interest in said lands to these defendants in the proportions hereinbefore set forth, and that said decree be so made that in default of such conveyance the decree itself shall operate as a conveyance of said premises.

5. And for such other and further relief as to the court may seem just and proper in the premises.

328 Dated April 20th, 1899.

FRANK CUTTING AND
TOWNE & HARRIS,
Attorneys for Frank W. Eaton.

STATE OF MINNESOTA, } ss:
County of St. Louis, }

Frank W. Eaton, being first duly sworn, deposes and says that he is one of the defendants in the above-entitled action; that he has read the foregoing answer, and that the same is true of his own knowledge except as — thos- matters stated on information and belief, and as to those he believes them to be true.

FRANK W. EATON.

Subscribed and sworn to before me this 20th day of April, 1899.
L. C. HARRIS,
[SEAL.] *Notary Public.*

329 [Endorsed:] No. —. State of Minnesota, county of St. Louis. District court, eleventh judicial district. Midway Company, plaintiff, against Frank W. Eaton *et al.*, defendant-. Answer. Towne & Harris, attorneys for F. W. Eaton, Duluth, Minn. W. Ayres. P. H. Seymour.

330 EXHIBIT A.

DEPARTMENT OF INTERIOR,
WASHINGTON, *February 18th*, 1889.

HYDE AND MCDONALD
vs.
EATON AND STRAM.

Sioux Half-breed Scrip.

The Commissioner of the General Land Office.

SIR: I have considered the case of Thomas W. Hyde and Angus McDonald *vs.* Frank W. Eaton, as attorney-in-fact for Orillie Stram, *née* Moreau, on appeal by the latter from the decision of your office, dated August 4th, 1888, holding for cancellation Sioux half-breed scrip, Nos. 19 D and 19 E located and adjusted as follows:

Scrip No. 19 D upon lots 3, 5 and 6 and S. E. ¼ of N. W. ¼ sec. 30, and that numbered 19 E upon lots 1 and 2 and S. W. ¼ of N. E. ¼ and N. W. ¼ of S. E. ¼, same section, T. 63, N. R. 11, W., Duluth, Minnesota.

It appears that Frank W. Eaton as attorney-in-fact for said Orillie Stram, *née* Moreau, a Sioux half-breed Indian, filed in the Duluth, Minnesota, local land office, on June 16th, 1883, the scrip above
331 mentioned, and located the same on certain unsurveyed land, in amount three hundred and twenty acres, which locations were subsequently adjusted by the local office, and approved and posted by your office to embrace the tracts above described.

Said half-breed scrip bore date November 24th, 1856, and had been issued under the provisions of the act of July 17th, 1854 (10 Stat., 304), to the Sioux half-breed named above.

July 20th, 1885, Angus McDonald presented at the local office a pre-emption application for lot 2, and the N. ½ of the S. E. ¼ and S. W. ¼ of N. E. ¼ of said section 30, which that office rejected, because the N. E. ¼ of the S. E. ¼ was denominated swamp and overflowed land, and as to the residue of the tract, because the date of settlement as alleged in the application to file did not antedate the unadjusted scrip location No. 19 E, with which it conflicted.

On the same day (July 20th, 1885), Thomas W. Hyde applied to make pre-emption filing for lots 5 and 6 and S. E. ¼ of N. W. ¼ and N. E. ¼ of S. W. ¼ of the same section (30), which application the local office rejected, for the reason that the alleged date of settlement did not antedate the unadjusted scrip location, No. 19 D.

November 14th, 1885, a hearing was ordered by your office upon the application of McDonald and Hyde, who alleged "that the scripee never made any improvements whatever upon said land, either in person or by an agent or attorney, and that said land, at the date of the attempted locations, was unsurveyed and belonged to the class of land only locatable with such scrip after
332 the scripee shall have made improvements upon the same."

In support of the charges thus made was filed a copy of an affidavit (the original is now in the record), made October 9th, 1884, by the scripee, in which she denied ever having given to said Frank W. Eaton, either directly or indirectly, a power of attorney, or any authority of any kind to locate said scrip or to erect buildings and make improvements on the land in controversy, or upon any other land for her use and benefit.

In refutation of the denial made as above by the scripee, Eaton filed copies of two powers of attorney given him by said scripee and her husband, May 25th, 1883, conferring upon him the power and authority to locate said scrip, and to make the improvements, which under the act of 1854, were necessary before location could be made on unsurveyed lands; also to do any other act necessary to be done in the premises, in order to secure a permanent and *bona fide* location, in the same manner as if done by them personally.

The case proceeded to hearing, which was had April 6th, 1886.

The register and receiver, after reference to the denial by the scripee that she had ever constituted or appointed Frank W. Eaton her attorney-in-fact to locate the scrip or to make the improvements required for its location upon unsurveyed lands, also to the fact that her position up to date of hearing seemed to be that of one attempting to set aside powers of attorney wrongfully obtained from her; also to the endeavor of Hyde and McDonald on the day of the hearing to show that the scrip locations were illegal and that they
333 had *bona fide* pre-emption claims to the disputed tracts, found as follows:

1. The scrip in question was located upon unsurveyed lands on June 16th, 1883, more than one year before the pre-emptors settled, and was adjusted to the surveys July 21st, 1885, nearly one year after settlement by said pre-emption claimants.

2. The record contains duly executed powers of attorney from the scripee and her husband to F. W. Eaton, giving him the full power to do all acts necessary "to perfect and secure a permanent and *bona fide* location" of the scrip.

3. Eaton, under said authority employed another to go upon the land and make suitable improvements, giving directions what improvements to make and how to make them, which improvements were made for Eaton, and for the purpose claimed by him.

4. The scripee, in her complaint, while stating that she did not know Eaton and never authorized him to make improvements on these lands, admitted that she parted with the scrip and signed powers of attorney shortly before the location. She did not appear at the hearing to testify in support of the charges made by her.

5. She has never asked that the locations be cancelled and that the scrip be returned to her, but, on the contrary, she between the date of her complaint and the day of hearing did execute and deliver a deed of confirmation, acknowledging, ratifying and confirming all that had been done by Eaton as her attorney.

334 On these findings of fact, the local officers concluded that "there is nothing in evidence to show that this scripee was misled or imposed upon by the defendant or his agents, or to controvert the fact that the scrip locations were effected in strict conformity with the usual accepted practice in such cases, and in accordance with law and the rules of the Land Department."

They accordingly held, in effect, that contestants had failed to make a case, and that the scrip locations should stand.

From that action contestants Hyde and McDonald appealed to your office assigning six specifications of error, viz:

1. That register and receiver were without authority to decide the cause, and could only properly report the case with their opinion upon the facts to your office.

2. This so-called decision was contrary to the evidence.

3. It was contrary to law.

4. It treated the case as if the controversy was between the scripee and her attorney-in-fact, whereas it grew out of contest by third parties, who claim to have shown that the scrip was fraudulent on the part of both the scripee and her grantees.

5. The local officers in their so-called decision failed to pass upon the vital question in the case, viz: Whether the land contained improvements made by or under the personal supervision or direction of the scripee, and for her personal use and benefit.

6. They erred in finding that a confirmatory deed made between two of the parties to a fraudulent entry could bar the right of subseqent *bona fide* applicants.

335 Pending these proceedings on appeal, to wit: April 28th, 1887, Fred F. Huntress filed in the local land office applications to contest not alone the scrip locations, as your office seems to have assumed, but also the pre-emption claims of Hyde and McDonald. Said applications were by the local office transmitted to your office, which under date August 30, 1887, returned them to the local office, with instructions that they be held subject to the final disposition of the case at bar. They have since been returned to the department and are now in the record before me.

Your office decision, proceeding to a review of the facts disclosed by the record, found that accompanying the scrip and applications to locate the same were what purported to be the original powers of attorney, given May 25th, 1883, by the scripee and her husband, to Frank W. Eaton; that with each application was an affidavit by said Eaton, setting out that he under said powers of attorney had caused to be built upon each of the tracts upon which the scrip was located a house, fourteen by sixteen feet, one-story high, of timber, covered with split shingles, with doors and windows; that he also had cleared one-half acre of each tract, and that said improvements

were made under the personal direction of the scripee, and for her personal use and benefit.

Your said office decision farther recites that in the record are what purported to be original powers of attorney given by the scripee and her husband to Leonidas Merritt, granting him full power and authority to enter upon and take possession of any and all pieces or parcels of land in the State of Minnesota, which they
336 then owned or might thereafter acquire, or become interested in, by virtue of the location of the scrip in question; to prosecute and defend any suit at law in the courts of said State, and to grant, bargain, sell, demise, lease, convey, and confirm said land, or any part thereof, by deed, conveyance, demise or lease, in the same manner as if performed by them individually.

Your said office decision further recites that in the record are certified copies of two warranty deeds, dated July 2d, 1883, and executed by said Leonidas Merritt, in the name of the scripee and her husband, under and by virtue of the power of attorney above mentioned, conveying to Edward Byrne, James H. Powers and Joseph Clement, an undivided one-third interest in and to all the land embraced in said scrip locations and involved in this controversy, the consideration named in each being $25,000.00; that there are also in the case certified copies of two warranty deeds, bearing date July 6th, 1883, executed in the same manner by the same parties of the first part, conveying to Frank W. Eaton an undivided two-thirds interest in and to the same tracts of land, the consideration named in each being $25,000.00; that Joseph Clement, one of the grantees of an undivided one-third interest, above mentioned, on August 28th, 1883, as appears by certified copies of two deeds of warranty on file, conveyed to one Nicholas Lansterf his undivided one-ninth interest in and to said tracts, the consideration named in each being $250.00; that on the next day (August 29th, 1883), as shown by certified copies on file, James H. Powers, another of the grantees of an undivided one-third interest, executed two similar deeds
337 conveying to said Lansterf his undivided one-ninth interest in and to said tracts, the consideration named in each deed being $350.00.

Your office decision also mention- certain quitclaim deeds (certified copies of which are in the record), executed and given by the several parties (except Clement), who made the above-mentioned warranty deeds, the purpose of the quitclaim deeds being to correct imperfect descriptions in the prior warranty deeds, which together embrace all the land covered by the scrip locations.

As a result of the conveyances above recited, your office decision finds that such title as passed under said conveyance now rests as follows:

Two-ninths interest in Nicholas Lansterf by conveyance from Powers and Clement. One-ninth interest in Edward Byrne under original conveyance from Merritt, as attorney-in-fact for the scripee, with power to sell; two-thirds (six-ninths) interest in Frank W. Eaton, under conveyance from Merritt, as attorney-in-fact.

Your office then holds that "these several deeds of conveyance

and release conferred no greater title upon the grantees than the grantors had, which was simply a right to these tracts of land, subject to the final adjudication and approval of these locations."

It then makes reference to the fact disclosed by the record that prior to the hearing before the local office, to wit, on March 31st, 1886, the scripee and her husband joined in a deed of confirmation, ratifying and confirming all and singular the acts of Frank W. Eaton and Leonidas Merritt, relative to the tracts in question, done and performed by them under the respective powers of attorney, given as hereinbefore described.

338 Proceeding, then, to a consideration of the testimony taken at the hearing, your office decision finds that it "establishes by a clear preponderance the fact that said Eaton by virtue of his power of attorney employed Edward Byrne to make the improvements upon the respective tracts in question, and that Byrne secured the services of Powers and Clement to assist him in the matter," that Eaton admits that the power of attorney under which he acted was executed by the scripee in blank; that he never saw the scripee until March 31st, 1886, never saw the land, and did not know whether scripee ever saw it or not; that the deed of confirmation by the scripee appears, so far as she and Eaton are concerned, to remove any objection to the acts previously performed by the latter, under and by virtue of his said power of attorney; that the affidavits accompanying the location of said scrip appear to fulfill the requirements of the circular of May 28th, 1878 (5 C. L. O., 126).

This would seem on its face to point to an adjudication in favor of the scrip locations; but your office decision further proceeds to say that the only other question left to pass upon touching the legality to these locations, is, whether the power of attorney given by the scripee to Frank W. Eaton, by virtue of which he made the locations, could carry with it, under the law, the power and authority to make the improvements, which were necessary as a prerequisite to valid location on the scrip on unsurveyed land. On this question your office decision concludes, that since the evidence shows clearly that the scripee in this case never saw the land, or

339 the improvements, or had anything whatever to do therewith, and since the circular referred to, *supra*, requires that the Indian shall have a direct connection with the land, and claim the same for his or her personal use, the scrip locations are not valid and should be cancelled, as speculative and made with an evident intent to evade the law, rather than to comply in good faith with legal requirements.

Upon a careful examination of the entire record, I find the facts to be substantially as stated by your office decision and outlined herein.

Epitomized, they are as follows:

The scripee disposed of her scrip, surrendering possession thereof to some one now unknown. Said scrip was accompanied by two powers of attorney, executed in blank, one giving authority to some one not then named to locate the scrip; the other, giving a like authority to sell the land located upon. The scrip, after many years and

after passing through several hands, lodged in the hands of Frank W. Eaton, who thereupon filled up the blanks in the power of attorney to locate, inserting his own name as that of attorney-in-fact for such purpose. He employed others to make slight improvements on the lands in question (then unsurveyed) and after such improvements, which were scarcely deserving of the name, he located the scrip as attorney-in-fact for Orillie Stram, the scripee.

The blanks in the other power of attorney (that to sell) were filled up by inserting the name of Leonidas Merritt, who it appears was a business partner of said Frank W. Eaton, and said Merritt, as attorney-in-fact of the scripee, executed certain warranty deeds, transferring and passing title to the lands covered by the scrip
340 locations to certain parties therein named, it appearing that said parties were Eaton, who had made the locations, and three men, Edward Byrne, James H. Powers, and Joseph Clement, who had been by him, or through his agency, employed to make the improvements above mentioned.

Money consideration was expressed in said deeds, but it is apparent from the evidence that the real consideration, so far as Byrne, Powers and Clement were concerned, was what they had done in making the improvements. They got an undivided one-third interest. The residue went to Eaton.

The scripee never saw the land. At the date of the location she had never seen Eaton, who acted as her attorney-in-fact, and did not then know that there was such a person in existence. She had, as a matter of fact, sold the scrip long prior to the location, and had no personal interest in the land, nor were the improvements made for her personal use and benefit. It was a matter of no moment to her where the scrip was located, or whether it was located at all or not. Her actual interest in the matter ceased when she disposed of the scrip. It was admitted by her so-called attorneys-in-fact that she was to have no interest in the land. For a long time she directly and positively repudiated Eaton and Merritt as her attorneys-in-fact, denying that they acted for her in any capacity whatever. Afterwards and but a few days prior to the hearing, she ratified by deed what had been done by them.

This ratification, it is evident, was procured at the solicitation of Eaton or Merritt, or both, and for a consideration. But such
341 ratification does not change the fact that the improvements and location, though made under the guise of a power of attorney, were made, not under the direction and in the interest of the scripee, but for the benefit solely of another not even known to the scripee, viz: Eaton, who had inserted his name as attorney in the power executed in blank. If the location of the scrip was illegal and invalid, then the deed of ratification could not give it validity—could not vitalize that which originally had not in it the germ or essence of legal vitality.

This case is in all essential particulars like that of Joseph W. Allen, *et al.*, *vs.* Lewis Merrill, *et al.*, decided by me this day, 8 L. D., 207—review denied, 12 L. D., 138, so far as the method of making the scrip locations is a matter of concern, and the reasons of that

case are in this particular applicable to this. Following the ruling of that case, I must hold that the scrip locations here in question are invalid, and your office decision so holding is affirmed.

There remain for disposition the rights of Hyde and McDonald. It is asserted that the case is not in such a position that any determination ought to be made as to these claims, and that must be determined by a view of the record and proceedings taken.

It appears that on the 9th day of October, 1884, Hyde filed with the register a paper addressed to the register and receiver, in the caption described as being "An application for leave to contest the pretended entry, with Sioux half-breed certificate No. 19 E, for one hundred and sixty acres, issued to Orillie Moreau, on November 24th, 1856, and attempted to be located on the following-
342 described land, to wit: "Describing the land, and that in that application, after the allegation attacking the location, the following appears:

"That said contestant is a single man over 21 years of age, and has declared his intention to become a citizen of the United States, that he does not own 320 acres of land in any State or Territory, that he has not left land of his own in this State to reside on the public lands, and that he has never heretofore exercised his right under the pre-emption laws.

"That heretofore, to wit: on the 20th day of August, A. D. 1884, the said contestant made settlement on the said described land with a view to inhabiting and cultivating the same for his own exclusive use and benefit, and intends to make his declaratory statement for said lands under the pre-emption laws of the United States as soon as the surveyed plat of township 63, N. of range 11, W. of 4th P. M., shall be returned to the United States land office at Duluth, Minn.

"Wherefore your petitioner requests that this contest may be granted and a day set for the hearing thereof."

Attached to this application was an affidavit of verification, sworn to on the 29th of September, 1884.

This application is stated, in the Commissioner's order for a hearing, hereinafter mentioned, to have been transmitted by the register to the General Land Office October 31, 1884, and to have been supported by a copy of an affidavit of the scripee, which has been before spoken of.

On the 20th day of July, 1885, Hyde made application to
343 file the declaratory statement previously mentioned in this opinion, which was rejected, and thirty days allowed by the register for appeal. On the 25th day of August, 1885, the register transmitted Hyde's appeal from that decision, to the General Land Office.

All the proceedings on the part of McDonald in respect to the land claimed by him correspond exactly with those of Hyde as to the land claimed by him; and were made by the same attorneys, and at the same time respectively.

Afterwards, on the 14th of November, 1885, the Commissioner of the General Land Office, by letter "C" of that date, ordered a hear-

ing, in which, after reciting the allegations for and against the validity of the scrip, he proceeds:

"In view of the conflicting statements respecting the legality of these locations, I deem it proper that a hearing should be held, that the respective parties may have an opportunity to submit such proof as they may have in support of their allegations, and that this office may be possessed of all the facts possible in the matter; and the same is hereby ordered.

"You will notify all parties in interest of the time and place of hearing, and at the proper time thereafter you will transmit to this office the testimony taken thereat with your opinion thereon."

Under this order of the Commissioner, when the hearing came to be held, it seems to have been assumed by all parties that the rights of Hyde and McDonald as pre-emptors were involved; and voluminous testimony was taken, not only with respect to the rights of the locators but with respect to the rights of the pre-emptors.

344 Upon the conclusion of the hearing, the register and receiver, being of the opinion that the scrip locations were valid, disposed of the pre-emptor's claims as follows:

"The *bona fides* of Hyde and McDonald or their rights under the pre-emption law need not be considered here, as the question of their claims is contingent upon their ability to set aside the scrip locations, and thus render the land subject to pre-emption settlement.

Upon this showing of fact, we conclude that the contestants have failed to make out a case, and that the proceedings should be dismissed. It is so ordered."

The decision of the Assistant Commissioner makes no allusion to the contest in regard to Hyde and McDonald, simply reversing the decision of the local officers, as to the validity of the scrip location.

Upon examination of the testimony taken at the hearing the following appears in the examination of Hyde:

Q. Did you have any contract with Mr. White in writing or otherwise, by which he was to receive any compensation of interest in the land?

A. Yes, there was a contract.

Q. Where is it?

A. I don't know.

Q. When and where did you last see it?

A. I have not seen it since it was drawn up by Mr. White.

Q. What did it contain?

A. It contained that, when I proved up, I was to secure him a one-half interest.

McDonald testified as to the land covered by his pre-emption claim:

345 "Judge White has no interest in it. There is an understanding that he is to have an interest in it if we succeed in this trial; he is to have a half interest. * * * The arrangement with Hyde is the same as mine. White is to have half if we succeed in this. James H. Power is also to have an interest in it if we suc-

ceed. I don't know how much he is to get. I agreed to give him an interest if we succeeded in getting the land."

He further testified:

"Mr. White is paying the expenses of the claim with the understanding that he is to have half of it after we secure it."

Again—

"I am to let him have an interest in the land when I get it to pay for his time and services. The contract I have with Mr. White for his one-half is in writing."

When asked how he could give Mr. White a half interest, unless he should deed to him one-half, he answered: "I could not very well."

White, when put upon the stand, testified that after diligent search he was unable to find the contract.

Further evidence than that quoted from the testimony of Hyde and McDonald is unnecessary to show that they have, by the contracts which they admit having made, disqualified themselves from taking the land under the pre-emption law.

Counsel, in one of the briefs in the case, aver as to McDonald that the records of your office will show that he has already exhausted his pre-emption right by having made a pre-emption filing, and, having filed a formal relinquishment of this claim there-
346 under. I have not attempted to test the correctness of this averment by an inspection of the records of your office. It is deemed unnecessary in view of the testimony of Hyde and McDonald, the pre-emption claimants, as to their contract to sell.

The testimony of the two claimants establishes beyond question that the statements made in their application to contest, that their settlements were made wholly for their own use and benefit, was not well founded, and that it would be impossible for either of them to make the affidavit required by section 2262 R. S., "that he has not, directly or indirectly, made any agreement or contract, in any way or manner with any person whatever, by which the title which he might acquire from the Government of the United States should inure in whole or in part, to the benefit of any person except himself."

In view of this record and proof, it appears to be the duty of the department to dispose of these claims of pre-emption. A hearing has been had upon the validity of them, in which the evidence was adduced fully, and upon which the material facts appear to have been sufficiently elicited to leave no doubt. Whatever rights they might have established would, under a familiar rule of the department, have been regarded as fixed at the time when they made their application to file. Their application to file must be treated as if they had been allowed, subject to the rights of others, and it now appears that they ought to be cancelled, if filed. Their appeal (which is sent up in the record) from the rejection of their applications, appears to bring the whole matter before the department; and in the exercise of the power of supervision vested in the department by
347 law, it seems to be demanded that upon this disclosure of the facts the proper action should be taken. If there had been

no hearing upon this question, the proper action would be, upon a suggestion of such information, to direct a hearing to be had; but inasmuch as a hearing has been had and as the testimony which shows the absolute impossibility of perfecting a pre-emption title in these claimants has proceeded from themselves, testifying under oath, there appears no reason for directing a further hearing.

If their declaratory statements were now to be filed as of that date, the duty would rest on the department to cancel them, in accordance with the ordinary practice in such cases.

This leaves to be considered one other branch or feature of the case as now presented by the record. On April 28th, 1887, one Fred T. Huntress filed formal applications to contest the pre-emption claims of said Hyde and McDonald, respectively, his charge being that said claims were initiated not in good faith to appropriate the lands to their own exclusive use, but for speculative purposes, they having agreed to convey title to other parties when procured by them.

Huntress, in his affidavits of contest, asks that a hearing be ordered to enable him to substantiate by competent proof the charges made.

Counsel for Huntress, however, argues in a brief recently filed that further hearing is unnecessary, and that the asserted claims of Hyde and McDonald may properly be rejected and finally disposed of on the record as it now exists.

It is therefore asked that such action be taken and the
348 scrip locations, as well as the pre-emption claims of said Hyde and McDonald being disposed of and the record cleared of any claim to the land, that he (Huntress) be accorded the preferred right of entry on said lands.

Notwithstanding the foregoing judgment to some extent was anticipated by the petition, this proceeds on the record all of which had been made up before Huntress came into the case as a pretended contestant, and was in no way or manner aided by what he did. His acts had nothing whatever to do with bringing about the rejection of either the scrip claims or those of Hyde and McDonald. Besides, an application to file a declaratory statement is hardly subject to contest. He is, therefore, in no position to claim a preferred right of entry as a successful contestant, and his application to be so considered and treated must be denied. This disposes of all the claims, and asserted claims to the land, so far as disclosed by the record before me, and leaves the land in question open to disposal under the public land laws of the United States applicable thereto, and such is the judgment of this department.

The papers in the case are herewith returned.

Very respectfully, WM. F. VILAS, *Secretary.*

349 11930.

STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1900.

THE MIDWAY COMPANY, Appellant,
vs.
FRANK W. EATON ET AL., Respondents. } No. 150. Syllabus.

By virtue of the act of July 17, 1854—10 U. S. Statutes at Large, 304—there was issued to one Orillie Moreau, a mixed blood of the Sioux nation, five pieces of what is known as half-breed scrip, one of these pieces, for 160 acres, being described as No. 19 D.

This piece was located June 18, 1883, on unsurveyed lands in the Duluth district, by one Eaton, who held a power of attorney executed and delivered by the recipient of the scrip and her husband, she having married a man named Stram in the meantime, which power authorized Eaton to locate the scrip and to do all acts necessary to secure a permanent and *bona fide* location thereof. After the land was surveyed and on July 21, 1885, the location was adjusted at the local office to governmental subdivisions on the application of the attorney-in-fact In a case instituted by one Hyde, who claimed the land under the pre-emption act, the Commissioner of the General Land Office held the Stram entry unauthorized and invalid, and
that the same should be cancelled and set aside.

350 This decision was affirmed by the Secretary of the Interior Feb. 18, 1889. Hyde's claim was disposed of adversely to him at the same time. The land was subsequently patented by the U. S. to one Hicks under the homestead act, and Hicks' successors in interest brought this action to determine adverse claims against defendants, who assert ownership under the Stram entry. On findings of fact the court below held as conclusions of law that the plaintiff held the legal title to the land in trust for defendants in certain undivided shares, and that said defendants were and are the owners thereof, and ordered judgment accordingly.

Held, that the Secretary of the Interior acted without the authority of law when he decided the Stram entry or location to be unauthorized and invalid, and for that reason affirmed the order of the Commissioner cancelling the same.

Held, further, that the scripee or her successors in interest could not be deprived of their rights in the land by the assumption of a supervisory power by the officials in the Land Department or by the issuance of a patent to another.

Held, that the findings were supported by the evidence and justified the conclusions of law.

351 11980.

STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1900.

THE MIDWAY COMPANY, Appellant,
vs.
FRANK W. EATON ET AL., Respondents. } No. 150. Opinion.

Action to determine an adverse claim to three governmental subdivisions situated in St. Louis county. The court below found against plaintiff, the corporation, and ordered judgment in favor of the defendants as owners of undivided interests. The appeal is from an order denying a new trial and also from the judgment thereinafter entered. This case is another chapter of the controversy which has been in progress since 1883, in the courts and in the Interior Department of the General Government, over that well-known and very attractive section thirty. The particular tracts here involved were referred to in the case of Bishop Iron Co. *v.* Hyde, 66 Minn., 24, recently affirmed in the Supreme Court of the United States as those upon which had been located prior to the initiation of Hyde's claim, Sioux half-breed scrip No. 19 D., issued to a woman named Moreau, which location was contested by Hyde, as therein set forth, a contest which resulted disastrously to both parties, the Secretary of the Interior finally sustaining the decision of the Commissioner of the General Land Office that the scrip location should be cancelled for non-compliance with the law,
352 and that Hyde had no rights as a pre-emptor, because he had previously contracted to sell and convey to a third party a portion of the land he proposed to acquire. In 1898 the land in question, a part only of that covered by the Moreau scrip, was patented by the U. S., under the homestead act, to one Hicks, and the plaintiff's claim of title is derived from him. The defendants assert ownership through and under the scrip location, their position being that the same was unlawfully cancelled by the officials of the Land Department; that the scripee could not be deprived of rights obtained under the location or entry; that the patent subsequently issued to Hicks inured to the scripee's benefit, and that the former and the plaintiff, who purchased with notice, held the land in trust for defendant. It is this trust which the court below enforced through the judgment appealed from. As we regard the case, the rights of the respective parties rest upon the legality of the rulings in the Land Department, the last being the affirmance by the then Secretary of the Interior of the order of cancellation as made by the Commissioner of the General Land Office August 4, 1888. This affirmance bore date February 18, 1889, and is unpublished. It was sustained by the successor in office of said Secretary. See 12 Land Dec., 157. In the Hyde case much of the history of this contest in the department is related. The testimony was taken before the local land officers, who were of the opinion that the scrip entries were valid. Certified copies of the

testimony of the witnesses produced at this hearing were received in evidence in the court below. The written opinion of the local officers and the findings made by them, if any, were not there presented; nor was there introduced the findings of fact and conclusions of the Commissioner as they appeared, undoubtedly, in his decision of August 4, 1888; but parts or all of these findings were recited in the decision of affirmance made by the Secretary, of date February 18, 1889, a certified copy of the same having been received in evidence at the trial. From this copy and other testimony it appears that on June 18, 1883, one Eaton, as attorney-in-fact for the half-breed, who had in the meantime married a man named Stram, and who will hereinafter be called Mrs. Stram,
353 filed the scrip in question, with other pieces, upon tracts of unsurveyed land in the Duluth district. The necessary affidavits, with the powers of attorney and diagrams to locate and identify the tracts, were also filed. All of the steps required by the rules and regulations of the Land Department seem to have been taken in due form. July 21, 1885, upon the application of the attorney-in-fact, scrip No. 19 D was adjusted by the local officers to the governmental subdivisions herein involved, and other subdivisions, the land having been surveyed by the authorities just previously. The Hyde contest was commenced the day before. We now come to facts which from the decision of the Secretary it appears were found by the Commissioner in decision affirmed by the Secretary, as before stated.

1. That accompanying the scrip and application to locate the same were what purported to be the original power of attorney, given May 25th, 1883, by the scripee and her husband to Frank W. Eaton; that with the application was an affidavit by said Eaton, setting out that he under said power of attorney had caused to be built upon the tracts upon which the scrip was located a house 14 by 16 feet, one story high, of timber, covered with split shingles, with doors and windows; that he also had cleared one-half acre of land, and also setting forth:

2. That said improvements were made under the personal direction of the scripee and for her personal use and benefit.

3. It was found by a clear preponderance the fact that said Eaton, by virtue of his power of attorney, employed Edward Byrne to make the improvements upon the tracts in question, and that Byrne secured the services of Powers and Clement to assist him in the matter.

4. That Eaton admits that the power of attorney under which he acted was executed by the scripee in blank; that he never saw the scripee until March 31st, 1886; never saw the land, and did not know whether said scripee ever saw it or not; that the deed of confirmation by the scripee appears, so far as she and Eaton are
354 concerned, to remove any objection to the acts previously performed by the latter under and by virtue of his said power of attorney.

5. That in the record are what purport to be an original power of attorney given by the scripee and husband to Leonidas Merritt,

granting him full power and authority to enter upon and take possession of any and all pieces or parcels of land in the State of Minnesota which they owned or might thereafter acquire or become interested in by virtue of the location of the scrip in question, to prosecute and defend any suit at law in the courts of said State, and to grant, bargain, sell, demise, lease, convey, and confirm said land, or any part thereof, by deed, conveyance, demise, or lease, in the same manner as if performed by them individually.

6. That on March 31st, 1886, the scripee and her husband joined in a deed of confirmation ratifying and confirming all and singular the acts of Frank W. Eaton and Leonidas Merritt relative to the tracts in question done and performed by them under the respective powers of attorney given as hereinbefore described.

The decision contains further recitals of findings which appear to us to be of no value when passing upon the main question before us and we shall have no occasion to again refer to them except incidentally. The decision proceeds, after stating facts, as follows, the italics being our own:

"This would seem on its face to point to an adjudication in favor of the scrip locations, but your office decision further proceeds to say that the only other question left to pass upon touching the legality to these locations is, whether the power of attorney given by the scripee to Frank W. Eaton, by virtue of which he made the location, *could carry with it, under the law, the power and authority to make the improvements*, which were necessary as a prerequisite to valid location on the scrip on unsurveyed land. On this question your office decision concludes that since the evidence shows clearly that the scripee in this case never saw the land or the improvements or had anything whatever to do therewith, and since the *cir-*
355 *cular referred to supra requires that the Indians shall have a direct connection with the land, and claim the same for his or her personal use*, the scrip locations are not valid and should be cancelled as speculative and made with an evident intent to evade the law rather than to comply in good faith with legal requirements."

The circular referred to was one issued in 1864 by the Land Department to the local officers, in which the latter were advised that scrip could be located:

4th. "Upon any other unsurveyed land, not reserved by Government, upon which they have respectively made improvements."

5th. "When not located by the reservee in proper person, the application to locate must be accomplished by the affidavit of the agent that the reservee is living, and that the location is made for the sole use and benefit of said reservee.

The land selected in satisfaction of a certificate of scrip must of course be located in the name of the party in whose favor the scrip is issued, and the location may be made by him or her in person or by his or her guardian or duly authorized agent."

The Secretary then proceeds to consider the facts "epitomized," as he claims, making several statements which are not founded upon any evidence now before us, and then he characterizes the improvements as "scarcely deserving the name."

In all essential particulars, said the Secretary, the case is like that of Allen *v.* Merritt, decided by him on the same day—8th Land Dec., 207; review denied, 12 *ib.*, 108—and, following the ruling in that case, the Secretary held the location invalid. If, on the facts as found, the Secretary correctly interpreted and applied the law which governs in such cases, his decision must be upheld. But if there was error in the construction of the statute, the decision is of no binding force in this litigation. Before considering the law under which the scrip was located let us briefly refer to the facts found by the Commissioner of the General Land Office, according to the Secretary's decision. The contents of the affidavits as
356 to the extent of the improvements made by Eaton are recited and inferentially, at least, are found to be true.

These improvements consisted of a log house 14 by 16 feet in size, one story high, covered with split shingles, with a door and place for a window. Half an acre was cleared. This was done in June under direction of Eaton, who held a power of attorney executed by Mrs. Stram and her husband less than a month before, to locate this scrip and "to do all acts necessary to secure a permanent and *bona fide* location thereof." We are clearly of the opinion that from the Secretary's decision it appears that the Commissioner found these improvements to have been made prior to the location; and it also appears that the Commissioner found that they were made by persons employed by Eaton for the purpose and by virtue of his power of attorney, the question being, as stated by the Secretary, whether the power to locate carried with it, under the law, the authority to make the improvement required to be made upon the location of scrip on unsurveyed lands. As the scripee never saw the lands or the improvements, had no direct connection with the land, and never claimed the same for her own personal use, it was held that the location was invalid, and the cancellation seems to have followed as a consequence.

The law under which scrip was issued to the half-breeds or the mixed bloods of the Sioux nation was the act of July 17, 1854, 10 U. S. Statutes at Large, 304.

The act is not complicated and in some respects is quite indefinite, but it empowered and authorized the President to cause to be issued to certain mixed bloods certificates or scrip for the same amount of land to which each individual would be entitled in case of a division of the Pepin reservation among them *pro rata*. There was a provision that these certificates or scrip might be located upon the lands within the reservation or upon other unoccupied lands subject to pre-emption or to private sale—that is, lands which had been surveyed, and also upon unsurveyed lands not reserved by the Government, "upon which the applicants have respectively made improvements." There was a provision that these certificates or scrip should not embrace more than 640 nor less than 40 acres
357 each, and they were to be equally apportioned among those entitled. To ascertain who was entitled, reference must be had to the 9th article of the treaty of Prairie du Chien, of date July 15, 1830, sec. 7, U. S. Statutes at Large, 331, from which it will ap-

pear that in a very general manner the reserved or Pepin tract was bestowed upon the half-breeds of the Sioux nation, they to hold as all other Indian titles were held. Thereafter, and as empowered by the 1854 act, the President caused certificates or scrip to be issued to these mixed bloods indiscriminately and without reference to age, sex, or other conditions. The result was that old and young, adults and minors, male and female, those that had but little Indian blood in their veins and those in whom such blood greatly prevailed, were the recipients. And this fact is not to be ignored when discussing the correctness of the Secretary's views as found in his decision of February 8, 1889. Under the law there *was* issued to each one of 640 persons, Mrs. Stram being one of the 640, 5 pieces of scrip thus described: 1 A, 40 acres; 1 B, 40 acres; 1 C, 80 acres; 1 D, 160 acres; 1 E, 160 acres, a total of 480 acres each. To each one of 38 persons there was issued one piece of 40 acres and two for 160 acres, in all, 360 acres to each. And this is another fact to be kept in mind.

There was also another proviso in the act of July 17, 1854, "that no transfer or conveyance of any of said certificates or scrip shall be valid." It is clear that this is a positive and emphatic prohibition on the assignability of the certificate- or scrip, but it is not a prohibition upon a conveyance of the land upon which scrip had been located. As was said in Gilbert *v.* Thompson, 14 Minn., 514, "no restraint is imposed upon the right of property in the land after it is acquired by location of the scrip. In the scrip itself the half-breed had nothing which he could transfer to another, but his title to the land, when perfected under it, was as absolute as though acquired in any other way. It follows that any attempt to transfer the scrip, directly or indirectly, would be of no effect as a transfer. The title to the scrip would remain in him and the title to the land acquired by
it would remain in him, just as though no such attempt
358 had been made.

Such attempt to transfer would not involve any moral turpitude nor the breach of any legal duty, as is the case with an attempt to transfer a pre-emptive right. It would be simply ineffectual, because the scrip is not transferable."

Further considering the law, it is well to look at the construction placed upon it by the officers of the Interior Department soon after scrip was issued to the beneficiaries, a construction contemporaneous with the passage of the law. We find that immediately after its issuance a circular was promulgated by the Commissioner of the General Land Office for the information and guidance of the local officers, a clause of which read that locations might be made "upon any unsurveyed land, not reserved by Government, upon which they have respectively made improvements. Where the scrip may be located on unsurveyed lands outside the reservation on which the half-breed has made improvements and which is not reserved by the Government, his application for location should be accompanied by a diagram and description, denoting the natural objects and distances, so as to fix with certainty the exact locality wanted, which serves as the best notice in our power to settlers that conflict

may be avoided and enable you, when the surveys are made, to designate the subdivisions embracing the location."

1 Lester's Land Laws, 626.

We have discovered that it was required, not that the improvements upon unsurveyed lands must be of a reliable or permanent character or that they should be made by the scripee or under his personal direction, but that the application should be accompanied by a diagram and description, that the exact locality might be designated, and thus, in connection with the improvements upon the ground, conflicts might be avoided between claimants, and the locations more easily and certainly adjusted when surveys were actually made.

The making of improvements by or under the scripee's immediate direction was not made of prime importance by the Commissioner when preparing these instructions. The practice and custom
359 of making scrip entries was definitely understood and well settled in the 17 years which followed prior to the issuance of another circular in the year 1864, emanating from the same office and for a like purpose, and from this we have hereinbefore quoted. In this circular it was stated that where a half-breed for himself may make actual settlement his improvements will be notice on the ground to any other settler; and we are of the opinion that the purpose of this feature of the law, requiring improvements to be made where the scrip was located on unsurveyed lands, must have been that visible notice by work done on the ground might thereby be given to other persons of the scripee's prior right, and thus prevent collision and conflict. The language as to improvements was general and vague. None were required where surveyed lands were located, and it is very evident that this requirement was for a minor purpose. Obviously it was not the design of the law to compel actual settlement or residence upon the land, for had it been the language would have been plain and unambiguous. This purpose was accomplished wherever the improvements were of such a character as to be notice and their value or extent was of little consequence. That in this case they were ample as notice ought not to be questioned. The entire purpose of the act itself seems to have been to promote and secure an exchange of the interests of the mixed bloods in the reservation, which was becoming valuable for actual settlers, for certificates or scrip which would be available for the acquirement of title in fee to specific parcels of land there or elsewhere on the public domain. It was proposed to compensate the mixed bloods who surrendered their rights or claims under the treaty in a manner which would be of some value, and it has been held that the fact that the Government saw fit to make the scrip as such non-assignable does not operate to prevent the beneficiary from making an agreement before location or giving power to convey the land when the scrip shall have been located and the land entered.

We need not cite decisions in support of this proposition, for they are abundant, Federal and State, nor need we stop to consider why

Congress saw fit to declare that the scrip should not be as-
360 signable and yet failed to deprive the scripee of the power of alienation immediately after the location and in pursuance of a bargain previously made. It is enough to know that the prohibition related solely to assignments of the scrip itself. So that, as before stated, the question is, was the land validly appropriated by the location of the scrip in the name of Orillie Stram, to whom it had been issued with four other pieces, and the only invalidity found by the Commissioner of the General Land Office and the Secretary was that Mrs. Stram had not seen the land or improvements and did not have direct connection with either, and never claimed the same for her personal use. The rules and regulations of the Land Department had not been complied with, it was stated, and it was held that this was sufficient to justify the cancellation.

Under the decisions of the Land Department, as well as those of the courts, a scripee can empower another to do all things necessary as a condition precedent to a location and then to actually locate. The improvements were made under the direction of a duly authorized agent, and then the entry was made in the name of the scripee by the same agent or attorney-in-fact. Mrs. Stram did not complain of this entry and urge that her rights had been disregarded. Upon the other hand, she ratified and confirmed every act performed by her attorneys-in-fact by a properly executed deed, executed in March, 1886. Now, when we examine some of the provisions of the law we are led to ask, could it have been the intention that each person to whom certificates or scrip was issued should see the land, in person, upon which each piece was to be located, or should, in person, see the improvements or claim the same for personal use, or be directly—that is, personally—connected with either or both?

Under the law the President was authorized to do what was actually done, issue to each person entitled several pieces of scrip of different sizes or acreage. Was it expected that each of these persons should be personally connected with the several and separate improvements required to be made if all of the pieces were located on unsurveyed lands, and would have to claim the same for
361 personal use? Surely not. This law contemplated and there *was* actually issued several pieces of scrip to each of a large number of minors. Babes in arms were held to be entitled and to them scrip was issued, and in many cases located before the minors reached majority, as might reasonably be expected. With these facts before us can it be held that Congress thought or intended that these minors would be required by a construction of the law to personally supervise the selection of from three to five tracts of land on which to locate their pieces of scrip, or that they would have to be directly connected with each of these locations, or in case unsurveyed lands were desired they would have to claim the necessary improvements as their own? In other words, do not these facts indicate to a moral certainty that it never occurred to the members of Congress that the construction placed on this law by the Secretary would be given to it at any time, much less after thirty years of wholly different construction, and a construction also which received judicial

recognition and approval? See Gilbert *vs.* Thompson, *supra*; Hope *v.* Stone, 10 Minn., 141; Marks *v.* Dickson, 20 How., U. S., 551. We are confident that they do so indicate and that the requirements found in the circular of May 28, 1878, were not in accordance with the law, and were therefore unauthorized. The act itself never required that the improvements should be of a certain kind or value or that the scripee should be directly connected with the land. It quite conclusively appears to the contrary when we consider the facts before referred to unless we take the position that the legislative branch of the General Government intended to confer upon the mixed bloods in exchange for their interest in the reservation scrip which would be of no value unless the recipients made personal selections, were directly connected with the locations and improvements, and made claim to both for their own use and benefit.

It is urged that Eaton's entry amounted to an evasion of that part of the law which forbade an assignment of the scrip, the well-known rule being evoked that an act which cannot be done directly cannot be accomplished indirectly. But if an agent can be authorized by the scripee to do all acts that may be necessary as a condition
362 precedent to a location, and may also be authorized to carry the scrip to the land office and complete the entry, and this, it is well settled, may be done, why is not the prohibition evaded quite as completely as the Secretary claimed it was in this case? The evasion is in every case where a contract of sale is made or contemplated, if it is in one. Locations under such circumstances have been repeatedly, almost universally, upheld, the officials of the department declaring, however, that the scripee cannot assign the scrip, that the location must be in the name of the person to whom the same was issued, and that the patent must be so issued, but further holding that, as the power to alienate is unrestricted by the law, an agreement to sell is not a matter for determination in the Land Department. It seems very apparent that the effect and validity of such an agreement must be left to the arbitrament of the courts, and not to the decisions of the Government officials.

We have not discussed the point made by counsel that, as the method adopted by Mr. Eaton was in accord with the long-continued practice of the department, as set out in its circular of 1857, the action of the Commissioner and the Secretary should be set aside as unwarranted. We think it unnecessary; nor do we consider at length the further point that the location of July 21, 1885, after the lands had been surveyed and the plats returned, was a valid location, even if the earlier one was invalid for the reasons assigned by the officials. It is true that the Hyde claim was the only one intervening when this scrip was adjusted or again located; and that claim was corrupt and invalid, as has been finally determined; so when the application of July 21 was made there was no valid existing adverse right which had attached and which stood in the way of a location of the scrip as upon surveyed lands, no improvements being necessary. There was no forfeiture of the scrip by the previous attempt to locate. If invalid, it was nothing but an attempt. No moral turpitude or breach of any legal duty was involved in the first location. If

Mr. Eaton, as the agent, had there expressed a desire to withdraw and relinquish all rights acquired previously and to lay
363 that particular piece of scrip on the land in question, as of that day, would not his right so to do seem unquestionable? And would not the obligation of the local officers to permit this act to be done appear to be beyond doubt? If this be true, why was not the legal effect of the adjustment a location of the scrip upon surveyed lands, there being no valid claim or right intervening and in conflict? The application then made was sufficient in form for an original location. If the scripee, Mrs. Stram, either in person or by agent, could that day have successfully applied for the land had she never made any previous attempt to obtain it, why should the application be rejected? Surely not on the ground that she had tried before and failed while the land was unsurveyed. Our conclusion is that upon the facts as found, hereinbefore stated, the Commissioner of the General Land Office and the Secretary of the Interior erroneously construed the law and imposed unwarranted conditions. The decision of the latter appears to have been predicated upon a circular of instructions, not upon a statute. It was error to hold that under the act in question it was vital that the scripee should see the land or the improvements prior to the entry, and that an agent could not act in her behalf when duly authorized not only in selecting the land itself, but in making such improvements as would in themselves and without regard to their value be notice on the ground of the assertion of a prior right. It was error to hold that the scripee had nothing to do with these improvements, for she had empowered an attorney-in-fact to make them. It was error to hold that the scripee must have direct connection with the land; and if, by his decision that the scripee must claim the land for her own personal use, the Secretary meant that such claim must be formally made or made in good faith or must be established by proof other than or different from that before the Land Department in this particular case, he was in error. There was not even an intimation in the law that the scripee should personally inspect or select the land or should make in person or even examine the improvements. Scrip was issued in from three to five separate and distinct pieces and of different
364 acreage. It was issued to persons who were old and decrepid, physically and permanently incapable of complying with the requirements established by the Secretary. Was the fact that they were old and disabled to be used to their injury, and were they to have nothing but unavailable pieces of paper? Certificates of scrip were issued to infants who would not reach a suitable age for obeying the behests of the land officials for a score of years. Were they expected to act through guardians or other agents and have some benefit of the provisions of the law, or were they expected to wait until majority came to them, and then to comply with the circular requirements? No distinction or discrimination was made in the law between the adult and the minor, — department could impose none by requiring less of the minor making a location than of the adult; nor did the law require that the land on which the scrip

was located must be selected by the mixed bloods for personal use, or even that a claim of this kind should be made. In fact, as we have seen, the inference to be drawn from its language and from what was done at and about the time is to the contrary, and the Secretary erred in holding, upon the facts as found, that the scripee had no interest whatever in the location made by her attorney-in-fact. Such a holding is, in effect, deciding that every piece of scrip issued to the mixed bloods which cannot be used by the recipient for his or her own personal benefit and for the acquirement of land for his or her own personal use could not be used at all and was of no value.

Finally, we hold that on the facts and the law the location in behalf of Mrs. Stram was proper and valid. It was error on the part of the officials of the Land Department to cancel the location and entry. Mrs. Stram or her successors in interest could not be deprived of her rights in the land by the assumption of a supervisory power by these officials or by the issuance, under their direction, of a patent to another person. The act of July 17, 1854, did not provide for the issuance of a patent, and the title to the property passed to Orillie Stram, *née* Moreau, by virtue of the location. The findings of fact justified the conclusions of law in the court below, and the judgment is affirmed.

COLLINS, *J.*

365 12016.

STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1900.

THE MIDWAY CO., Substituted for THE GERMANIA IRON CO., Appellant,
vs.
FRANK W. EATON ET AL., Def'ts; FRANK W. EATON *et al.*, Respondents.
} No. 213. Opinion.

Per Curiam:

All questions involved in this case are disposed of in Midway Co. *v.* same defendants. Opinion filed herewith.

Judgment affirmed.

366 [Endorsed:] Supreme court, State of Minnesota. The Midway Company, appellant, *vs.* Frank W. Eaton *et al.*, respondent. Opinion and syllabus. Filed May 16th, 1900. D. F. Reese, clerk. April term, A. D. 1900. Collins, judge.

367 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1900.

THE MIDWAY COMPANY, Appellant,
vs.
FRANK W. EATON, LEONIDAS MERRITT, MERRILL M. Clark, Richard H. Fagan, and Margaretha Lonstorf, Respondents. } No. 150.

Pursuant to an order of court, duly made and entered in this cause on the twenty-ninth day of May, A. D. 1900, it is here and hereby determined and adjudged that the judgment of the court below herein appealed from, to wit, the district court of the eleventh judicial district, sitting within and for the county of St. Louis, be, and the same hereby is, in all things affirmed.

And it is further determined and adjudged that the respondents above named do have and recover of said The Midway Company, appellant herein, the sum and amount of two hundred and sixty-four and $\frac{40}{100}$ dollars ($264.40), costs and disbursements in this cause in this court, and that said respondents have execution for the enforcement thereof.

Dated and signed this 29th day of May, A. D. 1900.

By the court.

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

Statement for Judgment.

Costs allowed by statute	$25.00
Clerk's fees for making return	
Printer's fees	228.00
Clerk's fees, supreme court	11.40
Filing mandate	
Affidavits and acknowledgments	
Postage	
	$264.40

368 [Endorsed:] 11980. State of Minnesota, supreme court. Transcript of judgment. Filed May 29, A. D. 1900. D. F. Reese, clerk.

STATE OF MINNESOTA, *Supreme Court,* } ss:

I, D. F. Reese, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the entry of judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom.

Witness my hand and the seal of said supreme court, at the capitol, in the city of St. Paul, this 29th day of May, A. D. 1900.

D. F. REESE, *Clerk.*

369 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1900.

THE MIDWAY COMPANY, Appellant,
vs.
FRANK W. EATON, LEONIDAS MERRITT, Merrill M. Clark, Richard H. Fagan, and Margaretha Lonstorf, Respondents.

No. 150. Appeal from District Court, Eleventh Judicial District, County of St. Louis.

This cause having been duly argued and submitted at the general April term of this court, A. D. 1900, upon the return to the appeal herein:

Now, after full and mature deliberation had thereon, it is here and hereby ordered that the judgment of the court below herein appealed from be, and the same hereby is, in all things affirmed, and that the respondents above named have judgment accordingly.

Entered May 29th, A. D. 1900.

By the court.

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

I hereby certify that the foregoing is a full and true copy of the original order for judgment entered in the above-entitled cause.

Attest: D. F. REESE, *Clerk.*

370 [Endorsed:] No. 11980. State of Minnesota, supreme court. Copy of order for judgment. Filed May 29, A. D. 1900. D. F. Reese, clerk.

371 STATE OF MINNESOTA:

Supreme Court, General April Term, A. D. 1900.

WEDNESDAY MORNING, 9.30 O'CLOCK, *April 25th, A. D.* 1900.

Court convened pursuant to adjournment, all the justices being present.

THE MIDWAY COMPANY, Appellant,
vs.
FRANK W. EATON ET AL., Respondents.

Cal. No., 150; Reg. No., 11980.

This cause came on to be heard this day upon the return to the appeal herein.

Thereupon the same was argued by counsel, submitted to the court for decision, and taken under advisement.

A true record.

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

The foregoing is a full and true copy of the minutes of argument in the above-entitled cause.

Attest: D. F. REESE, *Clerk.*

[Endorsed:] 11980. State of Minnesota, supreme court. Copy of minutes of argument. Filed May 29, A. D. 1900. D. F. Reese, clerk.

372 [Endorsed:] No. 11980. State of Minnesota, supreme court. The Midway Company, appellant, against Frank W. Eaton *et al.*, respondents. Judgment-roll. Filed May 29, 1900. D. F. Reese, clerk.

373 STATE OF MINNESOTA:

Supreme Court.

STATE OF MINNESOTA, } ss:
Office of Clerk of Supreme Court, }

I, Darius F. Reese, clerk of the supreme court of the State of Minnesota, do hereby certify and return to the Supreme Court of the United States that the foregoing and annexed transcript of record is a full and complete transcript of the record, judgment, judgment-roll, and all of the proceedings had in the said supreme court of the State of Minnesota in the case between The Midway Company, appellant and plaintiff in error, against Frank W. Eaton, Leonidas Merritt, Merrill M. Clark, Richard H. Fagan, and Margaretha Lonstorf, respondents and defendants in error, including the opinion of the said supreme court therein, as appears from the original files and records of said supreme court of the State of Minnesota.

And I do further certify and return that I have annexed to said transcript and included therewith a copy of the petition for writ of error and of the bond on the writ of error and approval thereof and the assignments of error as the same remain on file and of record in said supreme court of the State of Minnesota, and the original writ of error from the Supreme Court of the United States and the original citation issued thereon, with admission of service thereof, and that the foregoing constitutes a true and complete return to said writ of error.

In witness whereof I have hereunto set my hand and seal of said supreme court of the State of Minnesota, at the capitol, at Saint Paul, Minnesota, this 6th day of June, A. D. 1900.

[Seal of the Supreme Court, State of Minnesota.]

DARIUS F. REESE,
Clerk of the Supreme Court of the State of Minnesota.

374 STATE OF MINNESOTA:

Supreme Court, October Term, A. D. 1900.

THE MIDWAY COMPANY, Plaintiff in Error,
vs.
FRANK W. EATON, LEONIDAS MERRITT, MERRILL M. CLARK, Richard H. Fagan, and Margaretha Lonstorf, Respondents.

To the honorable chief justice of the supreme court of the State of Minnesota:

The petition of the Midway Company respectfully shows that on the 29th day of May, A. D. 1900, the supreme court of the State of Minnesota rendered a judgment against your petitioner in a certain cause wherein your petitioner, The Midway Company, was plaintiff and appellant and the said Frank W. Eaton, Leonidas Merritt, Merrill M. Clark, Richard H. Fagan, and Margaretha Lonstorf were defendants and respondents, as will appear by reference to the record and proceedings in said cause; that said supreme court of the State of Minnesota is the highest court of said State in which a decision in said suit could be had.

And your petitioner claims the right to remove said judgment to the Supreme Court of the United States by writ of error, under the statute of the United States, to wit, sec. 709 of the Revised Statutes of the United States, because in said suit and said judgment of the supreme court of the State of Minnesota there was drawn in question the validity of an authority exercised under the United
375 States and the decision of the said supreme court of the State of Minnesota was against the validity of said authority, and because in said suit your petitioner claimed title under a statute of the United States and the decision of the supreme court of the State of Minnesota in said suit was against the title of your petitioner claimed under said statute, all of which appears by the record of the proceedings in said cause, which is herewith submitted.

Wherefore your petitioner prays the allowance of a writ of error, returnable into the Supreme Court of the United States, and for citation and supersedeas; and he will ever pray, etc.

THE MIDWAY COMPANY, *Petitioner.*
WALTER AYERS,
Attorney for Petitioner,
208–209 *First National Bank Building, Duluth, Minnesota.*

STATE OF MINNESOTA, } ss:
County of St. Louis, }

Walter Ayers, being duly sworn, upon oath deposes and says that he is attorney for the petitioner named in the foregoing contention, and that the contents thereof are true of his own knowledge.

WALTER AYERS.

Subscribed and sworn to before me this 2d day of June, A. D. 1900.

H. A. DANEER,

[NOTARIAL SEAL.] *Notary Public, St. Louis County, Minnesota.*

376 [Endorsed:] 11980. State of Minnesota, supreme court, October term, A. D. 1900. The Midway Company, plaintiff in error, *vs.* Frank W. Eaton *et al.*, respondents. Petition for writ of error to U. S. Supreme Court. —— ——, attorney for plaintiff in error, 308–309 1st Nat'l Bank b'ld'g, Duluth, Minnesota.
Endorsed: Filed Jun- 4, 1900. Darius F. Reese, clerk.

377 STATE OF MINNESOTA:

Supreme Court, October Term, A. D. 1900.

THE MIDWAY COMPANY, Plaintiff in Error,
vs.
FRANK W. EATON, LEONIDAS MERRITT, MERRILL M. CLARK, Richard H. Fagan, and Margaretha Lonstorf, Respondents.

Order.

Upon motion of Walter Ayers, Esq., attorney for appellant, and upon filing a petition for a writ of error and an assignment of errors—

It is ordered that a writ of error be, and hereby is, allowed, to have reviewed in the Supreme Court of the United States the judgment heretofore entered in the above-entitled cause, and that the amount of the bond on said writ of error be, and the same is hereby, fixed at one thousand dollars ($1,000.00), the same to operate as a supersedeas.

Dated June 4th, A. D. 1900.

CHAS. M. START,
Chief Justice of the Supreme Court of the State of Minnesota.

378 [Endorsed:] 11980. State of Minnesota, supreme court, October term, A. D. 1900. The Midway Company, plaintiff in error, *vs.* Frank W. Eaton *et al.*, defendants in error. Order allowing writ of error. —— ——, attorney for plaintiff in error, 308–309 1st Nat'l Bank bldg., Duluth, Minnesota.
Endorsed: Filed Jun- 4, 1900. Darius F. Reese, clerk.

379 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Minnesota, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Minnesota, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in

the said suit between The Midway Company, appellant and plaintiff in error, and Frank W. Eaton, Leonidas Merritt, Merrill M. Clark, Richard H. Fagan, and Margaretha Lonstorf, respondents and defendants in error, wherein was drawn in question the validity of an authority exercised under the United States and the decision was against its validity, and wherein was drawn in question the construction of a statute of the United States and the decision was against the right and title specially set up or claimed under such statute, a manifest error hath happened, to the great damage of said The Midway Company, plaintiff in error, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same in the said Supreme Court, at Washington, on the third day of July next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

380

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the fourth day of June, in the year of our Lord one thousand nine hundred.

[Seal U. S. Circuit Court, Third Division, Dist. of Minnesota.]

HENRY D. LANG,
Clerk of U. S. Circuit Court for the District of Minnesota.

Allowed (to operate as a supersedeas).

CHAS. M. START,
Chief Justice of the Supreme Court of the State of Minnesota.

381 [Endorsed:] O K. 11980, original. Supreme court of the United States. The Midway Company, plaintiff in error, *vs.* Frank W. Eaton *et al.*, defendants in error. Writ of error. ——, attorney for plaintiff in error, 308–309 1st Nat'l Bank bldg., Duluth, Minnesota.

Endorsed: Filed Jun- 4, 1900. Darius F. Reese, clerk.

382 UNITED STATES OF AMERICA, *ss:*

To Frank W. Eaton, Leonidas Merritt, Merrill M. Clark, Richard H. Fagan, and Margaretha Lonstorf, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty (30) days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Minnesota, wherein The Midway Company is the plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment ren-

dered against the plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this fourth day of June, in the year of our Lord nineteen hundred.

CHAS. M. START,
Chief Justice of the Supreme Court of the State of Minnesota.

Service of the within citation and receipt of a copy thereof admitted this 5th day of June, 1900.

J. L. WASHBURN &
W. D. BAILEY,
Attorneys for Leonidas Merritt, Merrill M. Clark, and Richard H. Fagan, Defendants in Error and Respondents in Lower Court.

TOWNE & HARRIS,
L. C. HARRIS &
F. H. CUTTING,
Attorneys for Frank W. Eaton in Lower Court.

TOWNE & HARRIS,
PHELPS & McCLINTOCK &
WM. B. PHELPS,
Attorney for Margaretha Lonstorf in Lower Court.

383 [Endorsed:] 11980, original. Supreme Court of the United States. The Midway Company, plaintiff in error, *vs.* Frank W. Eaton *et al.*, defendants in error. Citation. —— ——, attorney for plaintiff in error.

Endorsed: Filed Jun- 4, 1900. Darius F. Reese, clerk.

384 STATE OF MINNESOTA, }
Department of Insurance. }

ST. PAUL, MINN., *June 4th*, 1900.

I, J. A. O'Shaughnessy, insurance commissioner of the State of Minnesota, do hereby certify that the Fidelity and Deposit Company of Maryland is a corporation organized under the laws of the State of ——, and is authorized under its charter to guarantee fidelity of persons holding places of public or private trust; to guarantee the performance of contracts other than insurance policies, and to execute and guarantee bonds and undertakings required or permitted in actions and proceedings at law; that it appears to my satisfaction, from sufficient evidence on file in my office of commissioner of insurance of said State of Minnesota, that said corporation, the Fidelity and Deposit Company of Maryland, has furnished the same security which is required by law and the regulations of my department of life insurance companies, under the provisions of sections 355 to 358, inclusive, of chapter 34, General Laws of the State of Minnesota of one thousand eight hundred and seventy-eight (1878).

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

[Seal of Ins. Dep'tm't of Minnesota.]

J. A. O'SHAUGHNESSY,
Insurance Commissioner.

385 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1900.

[Cancelled int. rev. stamp, five cents.]

THE MIDWAY COMPANY, Appellant,
vs.
FRANK W. EATON, LEONIDAS MERRITT, MERRILL M. CLARK, Richard H. Fagan, and Margaretha Lonstorf, Respondents.

Know all men by these presents that we, The Midway Company a corporation, as principal, and Fidelity and Deposit Company of Maryland, a corporation organized under the laws of Maryland, as surety, are held and firmly bound unto Frank W. Eaton, Leonidas Merritt, Merrill M. Clark, Richard H. Fagan, and Margaretha Lonstorf in the full and just sum of one thousand dollars ($1,000.00), to be paid to the said Frank W. Eaton, Leonidas Merritt, Merrill M. Clark, Richard H. Fagan, and Margaretha Lonstorf, their certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our successors, heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 29th day of May, in the year of our Lord nineteen hundred.

Whereas lately, at a session of the supreme court of the State of Minnesota, in a suit pending in said court between The Midway Company, plaintiff and appellant, and Frank W. Eaton, Leonidas Merritt, Merrill M. Clark, Richard H. Fagan, and Margaretha Lonstorf, defendants and respondents, a final judgment was rendered against the said plaintiff and appellant, and said plaintiff and appellant, The Midway Company, having obtained the al-
386 lowance of a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the foregoing suit, and a citation, directed to said Frank W. Eaton, Leonidas Merritt, Merrill M. Clark, Richard H. Fagan, and Margaretha Lonstorf, citing and admonishing them to be and appear at the Supreme Court of the United States, at Washington, within thrity (30) days from the date hereof:

Now, therefore, the condition of the above obligation is such that if the said The Midway Company shall prosecute its said writ of error to effect and shall answer all damages and costs that may be awarded against it if it fails to make its plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

In witness whereof the said The Midway Company has caused these presents to be signed by its president and its corporate seal to

be affixed, and the said Fidelity and Deposit Company of Maryland has caused these presents to be signed by a member of the local board of directors of Duluth, Minnesota, and its corporate seal to be hereto affixed the day and year aforesaid.

THE MIDWAY COMPANY,
By ANDREAS M. MILLER, *President.*

[Corporate Seal.]

FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By HENRY S. MAHON,
A Member of the Local Board of Directors for Duluth, Minnesota.

[Corporate Seal.]

Attest: ROSS L. MAHON, *Agent.*

Signed, sealed, and delivered in presence of—
REID P. LENHE,
JEROME BERNHEIMER,
As to Midway Company.

A. L. AGATIN,
J. LANETOL,
As to surety.

STATE OF NEW YORK, } ss:
County of New York, }

On this 29th day of May, A. D. 1900, before me, a notary public within and for said county, personally appeared Andreas N. Miller, who, being by me first duly sworn, deposes and says that he is the president of The Midway Company, a corporation, and one of the obligors in the foregoing document; that the seal affixed to
387 the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors, and the said Andreas M. Miller acknowledged the same to be the free act and deed of said corporation.

[NOTARIAL SEAL.]

REID P. LENHE,
Notary Public, N. Y. Co., #24.

STATE OF MINNESOTA, } ss:
County of St. Louis, }

On this 1st day of June, A. D. 1900, before me, a notary public, personally appeared Henry S. Mahon, who, being by me duly sworn, deposes and says that he is a member of the local board of directors for Minnesota of the Fidelity and Deposit Company of Maryland, a corporation organized and existing under the laws of Maryland; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its board of

directors, and the said Henry S. Mahon acknowledges the said instrument to be the free act and deed of the said corporation.

[NOTARIAL SEAL.] A. L. AGATIN,
Notary Public, St. Louis Co., Minn.

388 [Endorsed:] 11980. State of Minnesota, supreme court, April term, A. D. 1900. The Midway Company, appellant, *vs.* Frank W. Eaton *et al.*, respondents. Bond on writ of error to Supreme Court of U. S. I approve of the within bond and the sufficiency of the surety thereon. Dated June 4, 1900. Chas. M. Start, chief justice supreme court, State of Minnesota. —— ——, attorney for appellant, 308–309 First Nat'l Bank building, Duluth, Minn.

Endorsed: Filed Jun- 4, 1900. Darius F. Reese, clerk.

389 Supreme Court of the United States.

THE MIDWAY COMPANY, Plaintiff in Error and Appellant,
vs.
FRANK W. EATON, LEONIDAS MERRITT, MERRILL M. CLARK, Richard H. Fagan, and Margaretha Lonstorf, Respondents and Defendants in Error.

Comes now The Midway Company, plaintiff in error, by its counsel, and respectfully represents that it feels itself aggrieved by the proceedings and judgment of the supreme court of the State of Minnesota in the above-entitled cause and assigns error thereto as follows:

1. The court erred in holding that the Land Department of the United States had no authority to cancel the locations of the Sioux half-breed scrip issued under the act of Congress approved July 17th, 1854, and under which locations the defendants in error claim title.

2. The court erred in holding that the plaintiff in error holds the title derived under the patent issued by the United States for the premises in controversy in said action in trust for the defendants in error.

3. The court erred in holding that the defendants in error were and are the owners of the premises in controversy in said action.

4. The court erred in holding that the findings of fact of the court below justified its conclusions of law.

390 5. The court erred in holding that the title to the premises in controversy in this action passed to Orillie Stram, *née* Moreau, by virtue of the location of Sioux half-breed scrip under which the defendants in error claim title.

6. The court erred in not holding that the findings of fact of the Secretary of the Interior set forth and embodied in his decision of February 18th, 1889, were final and conclusive.

7. The court erred in not holding that the findings of fact of the Secretary of the Interior set forth and embodied in his decision of February 18th, 1889, were sufficient to warrant and sustain the action of the Land Department of the United States in cancelling

the Sioux half-breed scrip locations under which the defendants in error claim title.

8. The court erred in affirming the judgment of the court below.

9. The court erred in not reversing the judgment of the court below and directing judgment for the plaintiff in error and against the defendants in error, as prayed in its complaint.

Wherefore the said The Midway Company (substituted for the Germania Iron Company), plaintiff in error, prays the honorable court to examine and correct the errors assigned, and for a reversal of the judgment of the supreme court of the State of Minnesota entered in the above-entitled cause.

THE MIDWAY COMPANY (SUBSTITUTED FOR THE GERMANIA IRON COMPANY),
Plaintiff in Error,

By WALTER AYERS, *Its Attorney.*

391 [Endorsed:] 11980, original. Supreme Court of the United States. The Midway Company, plaintiff in error, *vs.* Frank W. Eaton *et al.*, defendant- in error. Assignment of errors. ——, attorney for plaintiff in error.

392 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1900.

THE MIDWAY COMPANY, Appellant,
vs.
FRANK W. EATON, LEONIDAS MERRITT, RICHARD H. FAGAN, and Merrill M. Clark, Respondents.

Assignments of Error.

1. So much of the second finding of fact as finds that the defendant Frank W. Eaton had, prior to the attempted location of said scrip, been duly empowered by Orillie Stram as her attorney-in-fact for the purpose of locating said scrip is not sustained by the evidence.

2. So much of the third finding of fact as finds that the scrip therein referred to was adjusted upon the premises therein described upon application of the said Orillie Stram is not sustained by the evidence.

393 3. So much of the third finding of fact as finds that said certificates of scrip were duly located upon said surveyed lands and the said lands as surveyed lands were taken and appropriated under and by virtue of said scrip is not sustained by the evidence.

4. So much of the third finding of fact as finds that at the time of the adjustment of said scrip referred to in said finding that there were not, nor were there at the time when said scrip was located on said unsurveyed lands, nor at any other time, any valid adverse claims to said lands is not sustained by the evidence.

5. The court erred in making so much of the fifth finding of fact

as purports to state the reasons of the Secretary of the Interior for the decision therein referred to, because the reasons as so stated by the court are at variance with the said decision itself, which is made a part of the findings, and are not sustained by the evidence.

5½. So much of the tenth finding of fact as finds "that the improvements caused to be erected by the said Frank W. Eaton upon the said premises consisted of a house about 14 x 16 feet in size," in so far as the same in anywise contradicts or modifies the findings of the Secretary of the Interior in his decision of February 18, 1889, is not sustained by the evidence.

6. So much of the tenth finding of fact as found that it did not appear from the evidence before the Secretary of the Interior that the scrip referred to in the decision of said Secretary had passed through many hands or through any hands before coming into the hands of the said Frank W. Eaton is not sustained by the evidence.

7. So much of the tenth finding of fact as found that it appeared from the evidence before the Secretary of the Interior that
394 the powers of attorney to said Frank W. Eaton were executed by the said Stram about one week before the location of the said scrip by the said Frank W. Eaton is not sustained by the evidence.

8. So much of the tenth finding of fact as found that it did not appear from the evidence before the Secretary of the Interior that the said scripee never saw the lands is not sustained by the evidence.

9. So much of the tenth finding of fact as found that it did not appear from the evidence before the Secretary of the Interior that the scripee had sold the said scrip long prior to the location thereof is not sustained *in* the evidence.

10. So much of the tenth finding of fact as found that it did not appear from the evidence before the said Secretary that for a long time the scripee directly and positively repudiated Eaton & Merritt as her attorneys-in-fact, denying that they acted for her in any capacity whatever, is not sustained by the evidence.

11. The court erred in its first conclusion of law.

12. The court erred in its second conclusion of law.

13. The court erred in its third conclusion of law.

14. The court erred in its fourth conclusion of law.

15. The court erred in denying the plaintiff's motion for a
395 new trial, made upon the ground that its said decision was not justified by the evidence.

16. The court erred in denying the plaintiff's motion for a new trial, made upon the ground that its said decision was contrary to law.

17. The judgment appealed from is in all respects erroneous and not warranted by the facts found, and the same should be reversed and judgment directed in favor of the appellant and against the respondents, as prayed for in the complaint.

396 In the Supreme Court of the United States.

THE MIDWAY COMPANY, Plaintiff in Error,
vs.
FRANK W. EATON ET AL., Respondents. } # 312. O. T., 1900.

Stipulation.

It is stipulated in the above-entitled cause that the answer of Frank W. Eaton, referred to, but not printed, at the top of page 34 of the printed record in the court below, may be printed in full in the record in the Supreme Court of the United States, at the end thereof or at such other place in such record as may be most convenient for the clerk of said Supreme Court of the United States.

Dated September 11th, A. D. 1900.

WALTER AYERS,
Attorney for Plaintiff in Error.
CHARLES A. TOWNE,
Attorney for Respondents Eaton & Lonstorf.
JED. L. WASHBURN,
Attorney for Respondents Merritt M. Clark, Richard H. Fagan, and Leonidas Merritt.

[Endorsed:] Supreme Court of U. S. # 312, O. T., 1900. The Midway Company, plaintiff in error, *vs.* Frank W. Eaton *et al.*, respondents. Stipulation. Original.

397 [Endorsed:] File No., 17,797. Supreme Court U. S., October term, 1900. Term No., 312. The Midway Co., P. E., *vs.* Frank W. Eaton *et al.* Stipulation in regard to printing record. Office Supreme Court U. S. Filed Sep. 14, 1900. James H. McKenney, clerk.

Endorsed on cover: File No., 17,797. Minnesota supreme court. Term No., 312. The Midway Company, plaintiff in error, *vs.* Frank W. Eaton, Leonidas Merritt, Merrill M. Clark, Richard H. Fagan, & Margaretha Lonstorf. Filed June 11th, 1900.